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Mr Fuller for [illegible]

Mr Justice Clifford

Mr [illegible]

March 19 1862 Mr Johnson

SUPREME COURT OF THE UNITED STATES.

No. ~~218~~. 136.

JOHN FARNEY, PL'FF IN ERROR,

VS.

JEREMIAH TOWLE.

IN ERROR TO THE SUPERIOR COURT OF THE CITY OF NEW YORK.

No Jurisdiction

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SUPREME COURT OF THE UNITED STATES.

No. 218.

JOHN FARNEY, PL'FF IN ERROR,

vs.

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IN ERROR TO THE SUPERIOR COURT OF THE CITY OF NEW YORK.

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Superior Court of the City of New York.

JEREMIAH TOWLE, Plaintiff, against JOHN FARNEY, Defendant.	Summons for relief.

To John Farney, the above defendant:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and serve a copy of your answer to the said complaint on the subscribers, at our office, No. 1 New street, in the city of New York, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated December 27th, 1849.

HOWLAND & CHASE, *Pltff's Att'ys,*
No. 1 *New street, in the city of New York.*

Superior Court of the City of New York.

JEREMIAH TOWLE, Plaintiff,
against
JOHN FARNEY, Defendant.

City and County of New York.

Jeremiah Towle, plaintiff in this action, complains of John Farney, defendant in this action, and for cause of complaint plaintiff shows that the plaintiff is the owner in fee simple, and entitled to the possession of all that certain lot, piece, or parcel of land, situate, lying, and being in the sixteenth ward of the city of New York, in the county of New York, on the westerly side of the Tenth avenue, and which is known and distinguished on a certain map of the property of Thomas B. Clarke, of said city, gentleman, made by Amos Corning and Uzal W. Freeman, city surveyors, by the number one hundred and eighteen, which lot is bounded westerly by the Hudson river, northerly by lot number 119 on said map, easterly by the Tenth avenue, and southerly by lot number 117 on said map: and the plaintiff being such owner in fee, and entitled to the possession of the said lot number one hundred and eighteen, the defendant, on the second day of May, 1849, without the leave or license of the plaintiff, entered upon the said lot number 118, and unlawfully withholds from the plaintiff the possession of the same, to his damage of one thousand dollars; wherefore the plaintiff demands judgment, and that the defendant may deliver up to the plaintiff the possession of said lot number 118, and pay the plaintiff his said damage of one thousand dollars.

And the plaintiff also complains of the defendant, and for the further cause of complaint the plaintiff shows, that on or about the 30th day of January, 1830, one Peter McIntyre was seized and possessed in fee simple of all that certain lot, piece, or parcel of land, situate, lying, and being in the sixteenth ward of the city of New York, in the county of New York, and which is known and distinguished on a certain map of the property of Thomas B. Clarke, of said city, gentleman, made by Amos Corning and Uzal W. Freeman, city surveyors, by the number one hundred and eighteen, and which lot is bounded westerly by the Hudson river, northerly by lot 119, on said map; easterly by the Tenth avenue; and southerly by lot number 117, on said map. And the said Peter McIntyre being so seized and possessed of the said lot number 118, by his indenture of conveyance, bearing date on or about the 30th day of January, 1830, for a valuable consideration conveyed the said lot number 118, unto Elijah Humphreys, late of the city of New York, merchant, deceased; that such conveyance, although absolute upon its face, was nevertheless, as the plaintiff hath been informed and believes, executed and delivered by the said Peter McIntyre to the said Elijah Humphreys, as a mortgage security to secure him the payment of certain moneys due from the said Peter McIntyre to the said Elijah Humphreys, and for certain moneys paid, and thereafter to be paid by the said Elijah Humphreys to and for the use of said Peter McIntyre.

And the plaintiff further shows, that he has been informed and believes, that whilst the said Elijah Humphrey held the said premises as a mortgage security as aforesaid, and in or about the month of April, 1834, the said Elijah Humphrey departed this life at the city of New York, intestate; and that on or about the 16th day of May, 1834, administration of all and singular the goods, chattels, credits, and effects, which were of the said Elijah Humphreys at the time of his death, was granted by the surrogate of the county of New York unto Maria Humphreys and Richard M. Clarke; that by virtue of such administration, the said administratrix and administrator held the said mortgage security upon the said lot number 118, in the same manner as the same was held by the said Elijah Humphreys in his lifetime, and at the time of his death; that the said Maria Humphreys and Richard M. Clark, as administratrix and administrator of the said Elijah Humphreys, deceased, on or about the 12th day of November, 1840, instituted a suit in the court of chancery of the State of New York, before the then vice-chancellor of the first circuit, against the said Peter McIntyre, for the purpose of foreclosing the equity of redemption of the said Peter McIntyre in and to the said mortgaged premises, and for a sale of said premises to pay certain moneys due on the said mortgage security from the said Peter McIntyre to the said

Elijah Humphreys in his lifetime and at the time of his death, and to the said Maria Humphreys and Richard M. Clarke, as such administratrix and administrator as aforesaid, after the death of the said Elijah Humphreys; and such proceedings were had in the said suit, that afterwards, and on or about the 24th day of December, 1840, a decree was made in the said cause by the then vice-chancellor of the first circuit, by which decree it was amongst other things ordered, adjudged, and decreed, that the said lot number 118 amongst other real estate described in such decree, be sold at public auction according to the course and practice of the said court of chancery, by or under the directions of one of the masters of that court residing in the city of New York, and that such master should execute to the purchaser or purchasers of said premises a good and sufficient deed or deeds of conveyance for the same, and that the purchaser or purchasers of the premises at such sale be let into the possession thereof, as by the said decree, record, pleadings, and proceedings in that suit remaining in the office of the clerk of the city and county of New York, reference being thereunto had, will, amongst other things, more fully and at large appear.

And the plaintiff further shows, that under and by virtue of the said decree and decretal orders of the said court of chancery made in the said cause, the said lot number 118 was, on or about the first day of May, 1844, exposed for sale at public auction at the Merchants' Exchange, in the city of New York, by or under the directions of Philo T. Ruggles, esquire, then one of the masters of the said court of chancery, residing in the city of New York, and at such sale the said lot number 118 was sold to the plaintiff by the said master for the sum of two thousand one hundred dollars, the plaintiff having bid that sum at such sale for said lot number 118, and that being the highest sum bidden therefor; that the plaintiff, pursuant to his said purchase, paid to the said master his said purchase money of two thousand one hundred dollars for said lot number 118, and thereupon the plaintiff caused the said master to execute and deliver his deed bearing date the 19th day of February, 1845, to James H. Suydam, of the city of New York, for said lot number 118, to be held by the said Suydam for the plaintiff, but as a mortgage security in favor of the said Suydam to secure him the payment of certain moneys lent and advanced by him to the plaintiff; that on or about the 22d day of May, 1847, the said James H. Suydam being desirous to obtain payment of the money for which he held the said lot number 118 as a mortgage security as aforesaid, one Edgar Broadhead lent and advanced the same to and for the use of the plaintiff, and with which money the plaintiff paid off the money so due to the said Suydam, and to secure to the said Broadhead the money so lent by him to and for the use of the plaintiff, the said James

H. Suydam, and Susan M. his wife, executed and delivered their deed bearing date the 22d day of May, 1847, to the said Edgar Broadhead for the said lot number 118, to be held by him for the said plaintiff, but as a mortgage security in favor of the said Broadhead, to secure him the payment of the moneys so lent and advanced by him to and for the use of the plaintiff.

And the plaintiff further shows, that on or before the 12th day of September, 1848, he paid to the said Broadhead the moneys so lent and advanced by him to the plaintiff, and all interest due thereon, and thereupon the said Edgar Broadhead, and Sarah Jane his wife, executed and delivered their deed to the plaintiff, bearing date the 12th day of September, 1848, for the said lot number 118, by virtue of which decree and sale by the said master, and purchase by the plaintiff, he became the owner of the said lot number 118 in fee simple, and entitled to the possession thereof, and still is such owner and entitled to the possession thereof.

And the plaintiff further shows, that the defendant is now wrongfully in the possession of the said lot number one hundred and eighteen, without the leave or license of the plaintiff, and wrongfully claims a right thereto, and although often requested, he has refused, and still refuses to deliver the possession of the said lot number 118 to the plaintiff.

And the plaintiff says, that he has sustained damage to the amount of one thousand dollars, by reason of the defendant withholding from him the possession of the said lot number 118.

The plaintiff, therefore, demands the judgment of this court, that the defendant do forthwith deliver to the plaintiff the possession of the said lot number 118, and pay the plaintiff his said damages of one thousand dollars, which he has sustained by reason of the defendant withholding from the plaintiff the possession of the said lot number 118.

JEREMIAH TOWLE.

HOWLAND & CHASE,
Att'ys for Plaintiff.

CITY AND COUNTY OF NEW YORK.

Jeremiah Towle, the plaintiff in the above entitled action, being duly sworn, doth depose and say, that he has read the foregoing complaint subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

JEREMIAH TOWLE.

Sworn to before me, this 27th day of December, 1849.

EPHRAIM H. HUDSON,
Comm'r of Deeds.

Superior Court.

Jeremiah Towle
against
John Farney.

John Farney, the defendant, answers to the complaint of Jeremiah Towle, plaintiff—

First. That to the best of the defendant's information and belief, the plaintiff is not, and never has been, the owner in fee simple, or otherwise, of the lot of land mentioned in the complaint, and designated as No. 118, or any part of it.

Second. That to the best of the defendant's information and belief, the plaintiff is not, and never has been, entitled to the possession of the said lot, or any part of it.

Third. That to the best of the defendant's information and belief, Peter McIntyre never was seized or possessed, in fee simple or otherwise, of the said lot, or any part of it.

Fourth. That whether the said Peter McIntyre ever executed any conveyance or mortgage of the said lot, or whether any suit was ever instituted to foreclose any such conveyance or mortgage, or whether the said lot was ever sold or exposed for sale under or pursuant to any decree or order of a court, or whether a sale thereof was ever decreed or ordered by a court, this defendant has no knowledge or information sufficient to form a belief, except that he is informed and believes that a sale of the said lot with other lots was advertised on or about the 29th day of April, 1844, as upon a decree of foreclosure. That at such sale, Charles A. Williamson and Catharine H., his wife, Rupert J. Cochran and Isabella M., his wife, Beverly Robinson, as trustee for the said Isabella, and Bayard Clarke, the owners of the said lots, caused notice to be given that they were such owners to all persons attending the sale, and to said plaintiff in particular before the sale, and that no title would or could pass by the sale, and that the said plaintiff thereupon replied that he did not care for the notice, and knew better.

Fifth. That whether any money was ever paid pursuant to such sale, or any deed executed thereupon, or whether any transactions ever took place between the said plaintiff and James Suydam, or Edgar Broadhead, or whether the said Suydam, or the said Broadhead, singly, or with their wives respectively, ever executed any deed, this defendant has no knowledge or information sufficient to form a belief.

Sixth. That the said lot so designated as number 118, is part of a tract of land of which Mary Clarke, widow, formerly of the city of New York, died seized and possessed in her own right in fee simple absolute in July, 1802; that previous to her death she made and published her last will and testament in due form of law, to pass real estate, by which she devised the said tract to Benjamin Moore and Charity, his wife, and Elizabeth Maunsell, in trust to receive the rents, issues, and profits thereof, and to pay the same to Thomas B. Clarke during his natural life; and from and after the death of the said Thomas B. Clarke, in further trust to convey the same to the lawful issue of the said Thomas B. Clarke, living at his death, in fee, which will was, after the death of the said Mary Clarke, duly proved before the surrogate of the city and county of New York, and in the supreme court of this State. The said trustees are all dead; the said Charity Moore having died on the 4th day of December, 1838, and the other two previous to 1820. The said Thomas B. Clarke died on the 1st day of May, A. D. 1826, leaving surviving him the following lawful issue and no other, viz: Catharine H. Clarke, who was born on the 5th day of June, 1807; Isabella M. Clarke, who was born on the 11th day of June, 1809; and Bayard Clarke, who was born on the 17th day of March, 1815. The said Catharine was married to Charles A. Williamson, on the 10th day of May, 1827, and the said Isabella to Rupert J. Cochran, on the 4th day of June, 1835; and on the 25th day of April, A. D. 1836, by a deed duly executed, the said Rupert J. Cochran and Isabella M. Cochran conveyed all the interest of the said Cochran and wife in the said lot No. 118 to Beverly Robinson, in trust for the said Isabella; wherefore the said Charles A. Williamson and Catharine H., his wife, Rupert J. Cochran and Isabella M., his wife, Beverly Robinson, trustee for the said Isabella, and Bayard Clarke, were, on the 22d day of March, 1845, lawfully seized in fee of the said lot, so designated as No. 118; as they were also then in the quiet possession thereof, and being so seized, and in possession, they, the said Rupert J. Cochran and Isabella M., his wife, Beverly Robinson, trustee for the said Isabella, and Bayard Clarke, did, on that day, let the said lot to this defendant for the term of one year from that day, and under such lease the defendant then went into the lawful and peaceable possession of the said lot, and continued in such possession until the expiration of the said lease, and at such expiration the said lease was renewed from year to year to the present time, and this defendant is now, under such renewal, tenant of the said lot until the 1st day of May next, and this defendant, under such letting, and by authority of the owners of the said lot, is now, and has ever since the said 22d day of March, 1845, continued in the lawful possession of said lot; and although, as the defendant believes, it is pretended on the part of the said plaintiff, that the said Thomas B. Clarke conveyed the said lot to the said Peter McIntyre, in pursuance of certain acts of the legislature as passed April 1st, 1814, entitled "An act for the relief of Thomas B. Clarke," another passed March 24th, 1815, entitled "An act supplemental to the act for the relief of Thomas B. Clarke," passed April 1st, 1814, and a third passed March 29th, 1816, entitled "An act further supplemental to an act entitled an act for the relief of Thomas B. Clarke;" yet this defendant, while he insists, according to the best of his information and belief, that the said acts were passed upon untrue suggestions without evidence, without notice to the children, or their appearance, or the appearance of any one on their behalf, were wholly unnecessary, and were unconstitutional and void; yet he alleges, that the conveyance alleged to have been executed by the said Thomas B. Clarke to the said Peter McIntyre was not made in pursuance of the said acts for various reasons, and among others, that it was not duly assented to by the chancellor of the State of New York, or by any one under his authority, or by his order; that it was not made upon a sale or for cash, in whole or in part; that it appears upon its face to have been made in satisfaction of a previous indebtedness of the said Thomas S. Clarke, and was in fact, as this defendant believes, given without any consideration whatever, as to the greater part of the amount for which it purports to have been given, and as to the rest, was given in payment of an antecedent debt of the said Thomas B. Clarke, and was fraudulently obtained from the said Thomas B. Clarke; that his children derived no benefit therefrom, or from the debts which it was intended to satisfy; that such debt was not contracted for their benefit, and the said Peter McIntyre knew that they, the children of the said Thomas B. Clarke, derived, and were to derive, no benefit from the said deed, and that it was given in fraud of their rights.

JAMES S. SLUYTER,
Def't's Att'y.

CITY AND COUNTY OF NEW YORK.

John Farney, the above defendant, being sworn, saith that he has heard read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters that he believes it to be true.

JOHN FARNEY.

Sworn to before me, Feb. 9th, 1850.

H. R. PIERSON,
Comm'r of Deeds.

In the Superior Court of the city of New York.

JEREMIAH TOWLE, Plaintiff,
against
JOHN FARNEY, Defendant.

The reply of the plaintiff to the answer of the defendant in this action as follows:

First. The plaintiff says that he is the owner in fee simple of the lot of land designated in the complaint in this action as lot number 118.

Second. The plaintiff is entitled to the possession of said lot, as stated in the complaint.

Third. Peter McIntire, mentioned in the complaint, was seized and possessed of said lot as stated in the complaint.

Fourth. The said Peter McIntire, by indenture of conveyance, did convey the said lot, numbered 118, by way of mortgage, to Elijah Humphreys, and proceedings were had in the court of chancery to foreclose such conveyance as a mortgage, and for a sale of said premises, and that such orders and decree for the sale of said premises were made by the said court, and said premises were sold to the plaintiff under said orders and decree, as stated in the complaint.

Fifth. The plaintiff denies that Charles A. Williamson and Catharine H., his wife, Rupert J. Cochrane and Isabella M., his wife, Beverly Robinson, trustee for the said Isabella and Bayard Clarke, or that any or either of them were or was the owners or owner of the said lot numbered 118, or any part thereof, at the time of the sale thereof to the plaintiff under the said decree, or that they, or any or either of them, have been such owners or owner at any time since such sale to the plaintiff.

Sixth. And the plaintiff denies that before or at the time of the sale of such lot to him he had any notice from such last mentioned persons, or either of them, that they were the owners of said lot, and that no title would or could pass by such sale.

Seventh. And the plaintiff says that the money was paid by him pursuant to such foreclosure sale, and the deed executed thereupon; and the transactions took place between the plaintiff and James H. Suydam and Edgar Broadhead, and the deeds were executed by said Suydam and Broadhead, and their wives, as stated in the complaint.

Eighth. And the plaintiff says that he has no knowledge or information sufficient to form a belief whether the trustees under the will of Mary Clarke are dead, or when Charity Moore died, or when the other two trustees under such will died, or when the said Thomas B. Clarke died, or whether the said Catharine H. Clarke, Isabella M. Clarke, and Bayard Clarke, or either of them, were the lawful issue of the said Thomas B. Clarke, or whether he was ever lawfully married, or whether he left any lawful issue him surviving, or when the said Catharine H. Clarke, Isabella M. Clarke, and Bayard Clarke, or either of them, was born, or when or to whom the said Catharine H. Clarke, or Isabella M. Clarke, was married; and he therefore does not admit the allegations, or any or either of them, in that behalf contained in the said answer, and leaves the defendant to his proofs.

Ninth. And the plaintiff says, that as to the devises, limitations, or trusts contained in the will of Mary Clarke, he does not admit them as stated in the said answer, but will refer to the said will, when it shall be produced, for the terms thereof.

Tenth. And the plaintiff says that he hath no knowledge or information sufficient to form a belief whether on the 25th day of April, 1836, or at any other time, Rupert J. Cochrane and Isabella M., his wife, executed any deed or conveyance for said lot, numbered 118, to Beverly Robinson, in trust or otherwise, for the said Isabella; but the plaintiff denies that the said Cochrane and wife, or either of them, on the 25th day of April, 1836, had any estate, right, title, or interest in or to said lot, numbered 118, or any part thereof, and he says that no estate, right, title, or interest in or to said lot, numbered 118, or any part thereof, passed or was conveyed by said alleged deed to the said Beverly Robinson, in trust or otherwise.

Eleventh. And the plaintiff denies that the said Charles A. Williamson and Catharine H., his wife, Rupert J. Cochrane and Isabella M., his wife, Beverly Robinson, in trust for the said Isabella and Bayard Clarke, were, or that any or either of them were or was on the 22d day of March, 1845, lawfully or otherwise, seized in fee or otherwise, of the said lot, numbered 118, or any part thereof; and he denies that they, or any or either of them, were or was seized of the said lot, or any part thereof, or had any estate, right, title, or interest therein, or in any part thereof, after the purchase thereof by the plaintiff, as stated in the complaint; and he denies that they were in the quiet possession thereof, and avers that any possession of said lot by the said last mentioned persons, or by either of them, was an unlawful possession as against the plaintiff, who hath been from the time of his said purchase at said foreclosure sale the lawful owner of said lot, and entitled to the possession thereof.

Twelfth. And the plaintiff says, that he hath no knowledge or information sufficient to form a belief, whether the said Rupert J. Cochrane and Isabella M. his wife, Beverly Robinson, trustee for the said Isabella and Bayard Clarke, did, on the 22d day of March, 1845, or at any other time, let the said lot number 118 to the defendant for the term of one year from that day, or for any other term, or whether the defendant, under such pretended letting, went into the possession of the said lot; but the plaintiff denies that the defendant went into any lawful or peaceable possession of said lot, and he avers that if the said Cochran and wife, Beverly Robinson, trustee as aforesaid, and Bayard Clarke, did let the said lot to the defendant, as alleged in the answer, such letting and the possession under the same, by the defendant, was fraudulent and void as against the plaintiff, and any possession of said lot by the defendant, under such pretended letting, or under any pretended renewal of such letting, is unlawful and fraudulent as against the plaintiff, who is entitled to the possession of said lot from the defendant.

Thirteenth. And the plaintiff denies that the acts of the legislature of this State, mentioned in the answer of the defendant, were passed upon untrue suggestions, or without evidence or notice to the children, or their appearance, or the appearance of any one on their behalf, or that such acts were unnecessary, or unconstitutional, or void; and he avers that the conveyance of the said Thomas B. Clarke of said lot, numbered 118, to the said Peter McIntyre, was made in pursuance of such acts, and was assented to by the court of chancery of the State of New York, or assented to, or approved by, a master of the said court of chancery, under the authority and by the order of the said court of chancery, and such conveyance was made upon a sale, and for cash, in whole or part, for a valuable and lawful consideration. And the plaintiff denies that it appears upon the face of such conveyance, that it was made in satisfaction of a previous indebtedness of the said Thomas B. Clarke to the said McIntyre, but the plaintiff avers that if the consideration of said conveyance purports to have been made in part payment of a previous indebtedness of said Clarke, the plaintiff says that the cash consideration of said conveyance paid by the said McIntyre to the said Clarke for such conveyance, and the property thereby conveyed, was more than such property was in fact worth at the time of such conveyance.

And the plaintiff denies, that as to the greater part of the amount for which such conveyance purports to have been made, that such consideration was an inadequate or invalid consideration, or that such conveyance was made without an adequate and valid consideration; and he also denies, that such conveyance was fraudulently obtained from the said Thomas B. Clarke, but he says that such conveyance was taken by said McIntyre fairly and in good faith, and was made for the benefit of said Clarke and his children, and if any previous indebtedness of said Clarke to said McIntyre is mentioned in such conveyance as a part of the consideration thereof, such indebtedness was contracted by said Clarke for his support and maintenance, and for the maintenance, education, or support of his children, and for their benefit; and the plaintiff denies that such conveyance was not made for the benefit of such children, or that the said McIntyre knew that they derived, or were to derive no benefit from such deed, or that it was given in fraud of their rights.

Fourteenth. And the plaintiff says, that he is informed and believes and alleges, that such conveyance was made by the said Thomas B. Clarke to the said Peter McIntyre, in the month of October, in the year 1818, and that it operated to convey and transfer to the said Peter McIntyre, his heirs and assigns, all the estate, right, title, interest, property, possession, claim and demand whatsoever, of the said Thomas B. Clarke and his children, in and to the said lot number 118, and every part thereof, and their reversion and reversions, remainder and remainders, in and to the same and every part thereof, and vested in the said Peter McIntyre and his assigns the fee simple absolute in the said lot number 118, and under and by virtue of such conveyance, the said Peter McIntyre, in the said month of October, in the year 1818, entered into the possession of the said lot, claiming the same by virtue of such conveyance and his said possession, as his absolute property; and the said McIntyre, from the said month of October, in the year 1818, and those claiming under him, possessed, held, and occupied the same until the sale thereof to the plaintiff in the year 1844, during all which time the said McIntyre, and those claiming under him, claimed the same as his absolute property in fee simple, and during that time possessed and claimed the same adversely to the said Thomas B. Clarke and his children, and all and every other person or persons whomsoever, and during the time said premises were so possessed and owned by the said McIntyre, he and those claiming under him were necessarily and lawfully compelled to pay, and did pay, large amounts of money to pay and discharge taxes and assessments which were levied and assessed on the said premises, and but for the payment of which the title to said premises would have been lost.

JEREMIAH TOWLE.

HOWLAND & CHASE,
Att'ys for Pl'ff.

CITY AND COUNTY OF NEW YORK.

Jeremiah Towle, plaintiff in the above action, being duly sworn, says, that he has read the foregoing reply, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

JEREMIAH TOWLE.

Sworn to, this 18th day of May, 1850, before me.

EPHRAIM H. HUDSON,
Com'r of Deeds.

Superior Court.

JEREMIAH TOWLE
agt.
JOHN FARNEY.
} Before Chief Justice Oakley.

The jury say, that they find a verdict for the plaintiff, and that he is entitled to the premises in fee, and his damages at one hundred and seventy-five dollars.

The verdict of the jury in this case having been entered, whereby they find a verdict for the plaintiff, and that he is entitled to the premises in fee, and assess his damages at one hundred and seventy-five dollars, for withholding the possession of the premises; on motion of Howland & Chase, attorneys for the plaintiff, it is adjudged that the plaintiff recover possession of the real property described in the complaint, and his said damages, besides his costs and disbursements of this action.

Superior Court.

JEREMIAH TOWLE, Respondent,
against
JOHN FARNEY, Appellant.
} Bill of Exceptions.

The issues in this action came on for trial before the chief justice, on the twenty-sixth day of March, 1851.

Upon such trial the plaintiff called as a witness on his behalf—

Rufus McIntyre, who testified: That his father, Peter McIntyre, went into possession of lot No. 118, on the map of the Clark estate, (the lot in question,) with other lots, in 1818, and so continued till they were sold by Mr. Ruggles, the master in chancery.

They were under the control of Humphreys a part of the time; my father was considered the owner; he paid the taxes and assessments; Humphreys first came into possession about 1829 or 1830.

The plaintiff then read in evidence the following documents:

This indenture, made the thirtieth day of January, in the year one thousand eight hundred and thirty, between Peter McIntyre, of the city of New York, boarding-house keeper, of the first part, and Elijah Humphreys, of the same city, merchant, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of two hundred dollars, lawful money of the United States of America, to him in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath remised, released and quit-claimed, and by these presents doth remise, release and quit-claim unto the said party of the second part, and to his heirs and assigns forever, all those lots of ground situate, lying and being in the ninth ward of the said city of New York, known and distinguished on a certain map of the property of Thomas B. Clarke, of the said city, gentleman, made by Amos Corning and Uzal W. Freeman, city surveyors, by the numbers one hundred and seventeen (117) and one hundred and eighteen, (118;) also, one hundred and thirty-one (131,) one hundred and thirty-two, (132,) and one hundred and thirty-three, (133); also, one hundred and thirty-four, (134,) one hundred and thirty-five, (135,) one hundred and thirty-six, (136,) one hundred and thirty-seven, (137,) one hundred and thirty-eight, (138,) one hundred and thirty-nine, (139); also, one hundred and five, (105,) one hundred and six, (106,) one hundred and seven, (107,) one hundred and eight, (108,) one hundred and nine, (109); also, sixty-four, (64,) sixty-five, (65,) sixty-six, (66,) and sixty-seven, (67.) Bounded as follows: Lots Nos. 117 and 118 are bounded westerly by the Hudson river, northerly by lot No. 119, easterly by Tenth avenue, and southerly by Twenty-fifth street. Lots Nos. 134, 135, 136, 137, 138 and 139, are bounded westerly by lots Nos. 130, 131, 132 and 133; northerly by lots Nos. 184, 185, 186, 187, 188, 189; easterly by lot No. 140, and southerly by Twenty-fifth street. Lots Nos. 105, 106, 107, 108 and 109, are bounded northerly by Twenty-fifth; easterly by lot No. 110; southerly by lots Nos. 66, 67, 68, 69 and 70, and westerly by lot No. 104. Lots 64, 65, 66 and 67 are bounded southerly by Twenty-fourth street, westerly by lot No. 68, northerly by lots Nos. 108, 109, 110 and 111, and easterly by lot No. 163: Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above-described premises, and every part and parcel thereof, with the appurtenances: To have and to hold, all and singular, the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

P. McINTYRE. [L. S.]

Sealed and delivered in the presence of—
H. H. BULLOCK.

City and County of New York, *ss.*

I do hereby certify that on the third day of February, in the year of our Lord one thousand eight hundred and thirty, before me personally appeared Peter McIntyre, of said city, known to me to be the same person described in, and who executed the within indenture in my presence, and he acknowledged that he executed the same as his act and deed for the uses and purposes therein mentioned, wherefore I do allow the same to be recorded.

THOMAS C. PINCKNEY,
Commissioner, &c.

At a court of chancery held for the State of New York, at the city of New York, on the 24th day of December, one thousand eight hundred and forty:

Present, William T. McCoun, vice-chancellor of the 1st circuit.

MARIA HUMPHREYS, Adm'x, &c.,
RICHARD M CLARKE, Adm'r, &c.,
of Elijah Humphreys, deceased,
vs.
PETER MCINTYRE.

This cause having this day been brought on to be heard, upon the bill of complaint filed therein, taken as confessed by Peter McIntyre, the defendant therein, and upon the report of Philo T. Ruggles, esquire, one of the masters of this court, residing in the city of New York, bearing date the 22d day of December, 1840, and made in pursuance of an order of this court heretofore made in this cause, whereby it was referred to the said master to compute the amount due to the complainants for principal and interest on the amount or sum of 13,747 dollars 93 cents, heretofore, and on the tenth day of February, 1840, reported due to the complainants, as stated in the said bill of complaint; and also for the costs and expenses of the said complainants, &c., the infant heirs-at-law of the said Elijah Humphreys, deceased, in a certain suit mentioned in the said bill, and the interest thereon, and to take and to state an account of all moneys paid by the complainants for taxes or otherwise, on account of the premises mentioned in the said bill, and for expenses, costs and fees, for and by reason of the said premises, making all due allowments for payments made. And by which said report it appears that there was due to the said complainants, at the date of the said report, for principal and interest upon the said moneys so reported due, as aforesaid, and for the costs, fees, expenses, advances, disbursements and payments in the premises, with the interest thereon, after making all due allowance and credits in favor of the defendant, and interest thereon, the sum of thirteen thousand eight hundred and sixteen dollars and thirty-five cents. Whereupon, on reading the said bill, and on reading and filing the said report, and on affidavit of Charles C. King proving that a notice of the pendency of this suit, in the form prescribed by the act entitled "An act to reduce the expenses of foreclosing mortgages in the court of chancery," passed May 14, 1840, was filed in the office of the clerk of the city and county of New York, in which county the mortgaged premises described in the bill of complaint in this cause are situated, at least forty days previous to the hearing of the said cause, and also showing in what manner the said bill was taken as confessed against the said defendant; and on motion of Charles C. King, of counsel for the complainants, it is ordered, adjudged, and decreed, and this court, by virtue of the authority herein vested, doth order, adjudge and decree, that the said report, and all things therein contained, do stand ratified and confirmed.

And it is further ordered, adjudged and decreed, that all and singular the premises mentioned in the bill of complaint in this cause, and hereinafter described, or so much thereof as may be sufficient to raise the amount due to the complainants for principal, interest and costs in this cause, and which may be sold separately, without material injury to the parties interested, be sold at public auction, according to the course and practice of this court, by or under the directions of one of the masters thereof residing in the city of New York; that the said sale be made in the county where the said premises, or the greater part thereof, are situated; that the master give public notice of the time and place of such sale, according to the course and practice of this court; and that any of the parties in this cause may become a purchaser or purchasers on such sale; that the said master execute to the purchaser or purchasers of the said premises, or such part or parts thereof as shall be sold, a good and sufficient deed or deeds of conveyance for the same; and that the said master pay to the complainants, or their solicitor, out of the proceeds of such sale, their costs in this suit to be taxed, and also the amount so reported due as aforesaid, together with legal interest thereon from the date of said report, or so much thereof as the purchase money of the said premises will pay of the same; and that the master take the receipt of the complainants, or of their solicitor, for the amount so paid, and fill the same with his report of sale; and that he bring the surplus moneys arising from the said sale (if any there be) into court without delay, to abide the further order of the court.

And it is further ordered, adjudged and decreed, that the defendant in this suit, and all persons claiming or to claim from or under him, subsequent to the commencement of this suit, and all other persons, although not parties to this suit, who have any liens by judgment or decree subsequent to the 30th day of January, 1830, or any liens or claims thereon, by or under any such subsequent judgment or decree, either as purchasers, incumbrances, or otherwise, be, and they are hereby, declared to be forever barred and foreclosed of and from all equity of redemption and claim of, in and to the premises so sold, and every part and parcel thereof; and that the puschaser or purchasers of the premises so sold be let into the possession thereof; and that any of the parties of this cause who may be in possession of the premises so sold, or any part thereof, and any person who, since the commencement of this suit, has come into possession under them, or either of them, deliver possession thereof to such purchaser or purchasers, on production of the master's deed for such premises, and a certified copy of the order confirming the report of the sale, after such order has become absolute.

And it is further ordered, adjudged and decreed, that if the moneys arising from the said sale are insufficient to pay the amount so reported due to the complainants, with interests and costs as aforesaid, that the said master specify the amount of such deficiency in his report of the sale; and that upon the coming in and confirmation of the said report, the defendant, Peter McIntyre, who is personally liable for the payment of the debt secured by the said pay to the complainants the amount of such deficiency, with interest thereon from the date of such last mentioned report, and that the complainants have execution therefor. The description and particular boundaries of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to, or from the bill of complaint in this cause, are as follows, viz:

All those lots of ground situate, lying and being in the sixteenth ward of the said city of New York, known and distinguished on a certain map of the property of Thomas B. Clarke, of the said city New York, gentleman, made by Amos Corning and Uzal W. Freeman, city surveyors, by the number (119) one hundred and nineteen, one hundred and thirty (130.) The said lot one hundred and nineteen being bounded as follows: on the west partly by the North river, and partly by the gore, number one hundred and twenty-five, on the south by lot No. 118, on the east by the 10th avenue, and on the north by lot No. 120, being in breadth, in front and rear, twenty-four feet eight inches, and in length on each side one hundred feet. The said lot No. 130 is bounded as follows: west by the 10th avenue, north by lot No. 129, east by lot No. 189, and south by lot No. (131) one hundred and thirty-one, the same dimensions as above, and also all those lots of ground situate, lying and being in the sixteenth ward of the said city of New York, known and distinguished on a certain map of the property of Thomas B. Clarke, of the said city, gentleman, made by Amos Corning and Uzal W. Freeman, city surveyors, by the numbers one hundred and seventeen (117), one hundred and eighteen (118); also one hundred and thirty-one (131), one hundred and thirty-two (132), one hundred and thirty-three (133); also one hundred and thirty-four (134), one hundred and thirty-five (135), one hundred and thirty-six (136), one hundred and thirty-seven (137), one hundred and thirty-eight (138), one hundred and thirty-nine (139); also one hundred and five (105), one hundred and six (106), one hundred and seven (107), one hundred and eight (108), one hundred and nine (109); also sixty-four (64), sixty-five (65), and sixty-six (66) and sixty-seven (67); bounded as follows: Lots No. 117 and 118 are bounded westerly by the Hudson river, northerly by lot No. 119, easterly by Tenth avenue, and southerly by Twenty-fifth street. Lots No. 131, 132 and 133 are bounded westerly on the Tenth avenue, northerly by lot No. 130, easterly by lot No. 134, and southerly by 25th street. Lots Nos. 134, 135, 136, 137, 138 and 139 are bounded westerly by lots Nos. 130, 131, 132 and 133, northerly by lots Nos. 184, 185, 186, 187, 188 and 189, easterly by lot No. 140, and southerly by 25th street. Lots Nos. 105, 106, 107, 108 and 109 are bounded northerly by 25th street, easterly by lot No. 10, southerly by lots Nos. 66, 67, 68, 69 and 70, and westerly by lot No. 104. Lots Nos. 64, 65, 66 and 67 are bounded southerly by 24th street, westerly by lot No. 168, northerly by lots Nos. 108, 109, 110 and 111, and easterly by No. 63.

All that lot of ground situate, lying and being in the sixteenth ward of the said city of New York, known and distinguished on a certain map of the property of Thomas B. Clarke, of the said city, gentleman, made by Amos Corning and Uzal W. Freeman, city surveyors, by the number (184) one hundred and eighty-four, bounded on the north by 26th street, easterly by lot No. 183, southerly by lot one hundred and thirty-nine (139), westerly by lot No. one hundred and eighty-five (185), containing in front twenty-five feet, and in depth ninety-nine feet four inches and a half inch.

All those two certain pieces or parcels of ground situate, lying and being on the Mount Vernon property in the 12th ward of the city of New York, and known and distinguished as lots Nos. (43) forty-three and forty-four (44), on a map of the said property made by Edward Doughty, city surveyor, September 5th, 1826, and on file in the office of register of the city and county of New York, and bounded as follows: beginning at the northerly corner on the southwesterly side of Sixtieth street, and southeasterly side of First avenue; thence running southwesterly on the First avenue, one hundred feet and five inches to the corner of lot No. forty-six (46); thence southeasterly at right angles on the line of lots Nos. 46 and 47 to the corner of lots Nos. 45 and 47, two hundred feet; thence northeasterly on the line of lot No. 45, one hundred feet five inches to Sixtieth street; thence on Sixtieth street, two hundred feet to the place of beginning, be the same more or less, being the same lots as conveyed by Philip Brasher and Cornelia, his wife, to the said Peter McIntyre, by two several deeds, dated the first day of November, in the year of our Lord one thousand eight hundred and twenty-six, duly recorded, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

This indenture, made the nineteenth day of February, in the year one thousand eight hundred and forty-five, between Philo T. Ruggles, one of the masters in chancery in and for the State of New York, dwelling in the city of New York, party of the first part, and James H. Suydam, of the same place, stone-cutter, of the second part. Whereas at a court of chancery, held at the city of New York, before the vice chancellor of the first circuit of the State of New York, on the 24th day of December, one thousand eight hundred and forty, it was, among other things, ordered, adjudged, and decreed, by the said court, in a certain cause then pending in the said court between Maria Humphreys, administratrix, and Richard M. Clark, administrator, &c., of Elijah Humphreys, deceased, complainants, and Peter McIntyre, defendant, that all and singular the mortgaged premises mentioned in the bill of complaint in said cause, and in said decree described, or so much thereof as might be sufficient to raise the amount due to the complainants for principal, interest, and costs in said cause, and which might be sold separately without material injury to the parties interested, be sold at public auction, according to the course and practice of this court, by or under the direction of one of the masters thereof residing in the city of New York; that the said sale be made in the county where the said mortgaged premises, or the greater part thereof, are situated; that the master give public notice of the time and place of such sale, according to the course and practice of said court, and that any of the parties in said cause might become a purchaser or purchasers on such sale; that the said master execute to the purchaser or purchasers of the said mortgaged premises, or such part or parts thereof as should be sold, a good and sufficient deed or deeds of conveyance for the same. And whereas a certificate of the enrolment of said decree, signed by the clerk of said court, has been presented to the said party of the first part; and whereas the said master in chancery, in pursuance of the order and decree of the said court, did, on the 29th day of April and 1st day of May, 1844, sell at public auction, at the Merchants' Exchange, in the city of New York, part of the premises in the said order mentioned, due notice of the time and place of such sale being first given, agreeably to the said order; at which sale the premises hereinafter described were struck off to the said party of the second part, for the sum of five thousand five hundred dollars, that being the highest sum bidden for the same: Now this indenture witnesseth that the said master in chancery, the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the order and decree of the said court, and in conformity to the statute in such case made and provided, and also in consideration of the premises, and of the said sum of money so bidden as aforesaid being first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth grant and convey, unto the said party of the second part, his heirs and assigns, all those two certain lots, pieces or parcels of land, being part of the said mortgaged premises, situate, lying and being in the sixteenth ward of the city of New York, on the northerly side of Twenty-fourth street, in the city of New York, and known and distinguished on a certain map of the property of Thomas B. Clarke, of the said city, gentleman, made by Amos Corning and Urzal W. Freeman, city surveyors, by the numbers sixty-four (64) and sixty-five, (65,) bounded and containing as follows: Southerly in front by 24th street, westerly by lot number sixty-six (66) on said map, northerly by lots number 110 and 111 on said map, and easterly by lot number 63 on said map. And also all those two certain other lots, pieces or parcels of land, being part of the said mortgaged premises, situate, lying and being in the said sixteenth ward of the city of New York, on the westerly side of the Tenth avenue, and known and distinguished on the map aforesaid by the numbers one hundred and seventeen (117) and one hundred and eighteen (118). The said lot number 118 being bounded westerly by the Hudson river, northerly by lot number 119 on said map, easterly by the Tenth avenue, and southerly by lot No. 117 on said map. The said lot No. 117 being bounded westerly by the Hudson river, on the south by Twenty-fifth street, on the east by the Tenth avenue, and on the north by lot number 118 on said map.

To have and to hold all and singular the premises above mentioned and described, and hereby conveyed, or intended so to be, unto the said party of the second part, his heirs and assigns, to his and their only proper use, benefit and behoof, forever.

In witness whereof, the said Philo T. Ruggles, master in chancery as aforesaid, hath hereunto set his hand and seal, the day and year first above written.

PHILO T. RUGGLES, [L. S.]
Master in Chancery.

Sealed and delivered in the presence of—three lines on second page erased before execution—
HY. P. WANMAKER.

STATE OF NEW YORK, *ss.*

On the twentieth day of February, one thousand eight hundred and forty-five, before me came Philo T. Ruggles, known to me to be the individual described in and who executed the above conveyance, and acknowledged that he executed the same.

HY. P. WANMAKER,
Com'r of Deeds.

This indenture, made the twenty-second day of May, in the year one thousand eight hundred and forty-seven, between James H. Suydam, of the city and State of New York, and Susan M. his wife, of the first part, and Edgard Brodhead, of the same city, merchant, of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of five thousand and five hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all these two certain lots, pieces, or parcels of land, being situate, lying, and being in the sixteenth ward of the city of New York, on the northerly side of Twenty-fourth street, in the city of New York, and known and distinguished on a certain map of the property of Thomas B. Clark, of the said city, gentleman, made by Amos Corning, Uzal W. Freeman, city surveyors, by the numbers sixty-four (64) and sixty-five (65), bounded and containing as follows: southerly in front by Twenty-fourth street; westerly by lot number sixty-six (66) on said map; northerly by lots numbers 110 and 111 on said map; and easterly by lot number 63 on said map. And also, all those two certain other lots, pieces, or parcels of land, being part of the said mortgaged premises, situate, lying, and being in the said sixteenth ward of the city of New York, on the westerly side of the Tenth avenue, and known and distinguished on the map aforesaid by the numbers one hundred and seventeen (117) and one hundred and eighteen (118): the said lot number 118 being bounded westerly by the Hudson river, northerly by lot 119 on said map, easterly by the Tenth avenue, and southerly by lot number 117 on said map; the said lot number 117 being bounded westerly by the Hudson river, on the south by Twenty-fifth street, on the east by the Tenth avenue, and on the north by lot number 118 on said map; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances: to have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said James Suydam, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that he hath not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby, or by means whereof, the above-mentioned and described premises, or any part or parcel thereof, now are, or any time hereafter shall or may be, impeached, charged, or encumbered in any manner or way whatsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES H. SUYDAM. [L. S.]
SUSAN M. SUYDAM. [L. S.]

Sealed and delivered in the presence of—
WM. H. BUNN.

CITY AND COUNTY OF NEW YORK, *ss.*

On the 31st day of May, 1847, before me came James H. Suydam and Susan M. his wife, to me known to be the individuals described in, and who executed the within indenture, and severally acknowledged to me that they executed the same; and the said Susan M., on a private examination apart from her husband, acknowledged to me that she executed the same freely, and without any fear or compulsion of her said husband.

WM. H. BUNN,
Commissioner of Deeds.

This indenture, made the twelfth day of September, in the year one thousand eight hundred and forty-eight, between Edgar Brodhead, of the city and State of New York, merchant, and Sarah Jane his wife, of the first part, and Jeremiah Towle, of the said city of New York, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of six thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all those two certain lots, pieces, or parcels of land, situate, lying, and being in the sixteenth ward of the city of New York, and known and distinguished on a certain map of the property of Thomas B. Clark, of the said city, gentleman, made by Uzal W. Freeman, city surveyor, by the numbers sixty-four (64), sixty-five (65), bounded and containing as follows: Southerly in front, by Twenty-fourth street; westerly by lot number sixty-six (66) on said map; northerly by lots numbers one hundred and ten (110) and one hundred and eleven (111) on said map; and easterly by lot number sixty-three (63) on said map; and also, all those two certain other lots, pieces, or parcels of land, situate, lying, and being in said sixteenth ward of the city of New York, on the westerly side of the Tenth avenue, and known and distinguished on the map aforesaid by the numbers one hundred and seventeen (117) and one hundred and eighteen (118): the said lot, number one hundred and eighteen (118) being bounded westerly by the

Hudson river; northerly by lot number one hundred and nineteen (119) on said map; easterly by the Tenth avenue; and southerly by lot number one hundred and seventeen (117); being bounded westerly by the Hudson river; on the south by Twenty-fifth (25) street; on the east by the Tenth avenue; and on the north by lot number one hundred and eighteen on said map; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances: to have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said Edgar Brodhead, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that he hath not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby, or by means whereof, the above-mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged, or encumbered, in any manner or way whatsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

EDGAR BRODHEAD, [L. S.]
SARAH JANE BRODHEAD. [L. S.]

Sealed and delivered in the presence of—
DAN. MARVIN.

STATE OF NEW YORK,
City and County of New York, ss.

On this twelfth day of September, in the year 1848, before me came personally Edgar Brodhead and Sarah Jane Brodhead, his wife, to me well known to be the persons described in and who executed the within conveyance, and acknowledged to me that they had executed the same; and the said Sarah Jane Brodhead, on a private examination, apart from her husband, acknowledged to me that she had executed the same freely and without any fear or compulsion of her said husband.

DAN. MARVIN,
Com'r of Deeds.

These documents were all objected to by the defendant; the objection was overruled, and the defendant excepted.

Being cross-examined, the witness stated: Don't know who had possession; on one or both the lots there was a small shanty, called a Bee-hive; it covered a quarter of the front of a lot; think there was a rough kind of a fence; my father bought the property from Thomas B. Clarke.

On direct examination again, he stated: That the house stood lengthwise of the lot, and that was large enough to contain a man, his wife, and six children; the side of the lot towards the river was open; the fence was around a part of one or both of the lots on the north and east; the south side and the river was open; don't think there was a garden; the building was not put up till a number of years after my father had bought the property.

The defendant's counsel then admitted that the defendant was in possession of the premises in question in this action, and that they are located in the southern moiety of the farm at Chelsea, devised by the will of Mary Clarke.

The plaintiff here rested his case; the defendant thereupon moved to dismiss the complaint; the court refused the motion, and the defendant excepted.

The defendants then proved and read the will of Mary Clarke annexed, and the following stipulations:

Superior Court.

JEREMIAH TOWLE
agst.
JOHN FARNEY.

THE SAME
against
JAMES ROBINSON.

THE SAME
against
COURTLANDT WOOD.

THE SAME
against
EDWARD CONKLIN.

It is hereby agreed, that on the trial of these cases, either party may read the copies contained in the annexed pamphlet, after the words, "will of Mary Clarke," instead of the originals, subject to all legal exceptions to the admissibility and effect of the originals, or any of them.

March 25, 1851.

HOWLAND & CHASE,
Att'ys for Pl'ff.

Being copies of papers contained in the printed case of Charles A. Wilkinson and Catharine, his wife, against Joseph Berry, in the Supreme Court of the United States. Said printed case is marked with the names of D. D. F. and Nelson Chase.

Superior Court.

JEREMIAH TOWLE
against
JOHN FARNEY.

SAME
against
JAMES ROBINSON.

SAME
against
COURTLANDT WOOD.

SAME
against
EEWARD CONKLIN.

It is hereby admitted, for the trial of these causes, that Thomas B. Clarke died on the first day of May, 1826, leaving the following lawful issue, and no others, viz: Catharine H. Clarke, who was born June 5, 1807, and married to Charles A. Williamson May 10, 1827; Isabella M. Clarke, who was born June 11, 1809, and married to Rupert J. Cochran June 4, 1835; and Bayard Clarke, who was born March 17, 1815; and that the trustees named in the will of Mary Clarke are all dead, Mrs. Moore having died since 1830.

New York, March 24, 1851.

HOWLAND & CHASE,
Att'ys for Pl'ff.

We hereby let to John Farney the lots numbered on "map of lands in the sixteenth ward of the city of New York, the property of the heirs of Mary Clarke, deceased," made by George B. Smith, city surveyor, and dated April 6th, 1837, 117 and 118, for the terms of one year from this day, at the rate of fifty dollars per annum.

New York, March 22d, 1845.

C. A. WILLIAMSON,
RUPERT J. COCHRAN,
BAYARD CLARKE.

Superior Court.

JEREMIAH TOWLE
agst.
JOHN FARNEY.

I agree to admit, on the trial of this cause, the genuineness of the signatures of the above paper.

March 25, 1851.

HOWLAND & CHASE,
Att'ys for Pl'ff.

The defendant then called as a witness—

Beverly Robinson, who testified: That the lot in question, numbered 118, was a portion of the property at Chelsea included in the following devise of the will of Mary Clarke:

"Item. I give and devise unto the said Benjamin Moore and Charity, his wife, and Elizabeth Maunsell and their heirs forever, as joint tenants, and not as tenants in common, all that certain lot of land, number eight in the said thirteenth allotment of the said patent, containing one hundred acres; also all that part of my said farm at Greenwich aforesaid called Chelsea, lying to the northward of the line hereinbefore directed to be drawn from the Greenwich road to the Hudson river twelve feet to the northward of the fence standing behind the house now occupied by John Hall, bounded southerly by the said line, northerly by the land of Cornelius Ray, easterly by the Greenwich road, and westerly by the Hudson, including that part of my said farm now under lease to Robert Lenox: also all my house and lot, with the appurtenances, known by number seven within the limits of the prison, and now occupied by Thomas Byron; to have and to hold the said hereby devised premises to the said Benjamin Moore and Charity, his wife, and Elizabeth Maunsell, and to the survivor or survivors of them, and the heirs of such survivor, as joint tenants, and not as tenants in common, in trust to receive the rents, issues and profits thereof, and to pay the same to the said Thomas B. Clarke, natural son of my late son Clement, during his natural life, and from and after the death of the said Thomas B. Clarke, in further trust to convey the same to the lawful issue of the said Thomas B. Clarke, living at his death in fee; and if the said Thomas B. Clarke shall not leave any lawful issue at the time of his death, then in the further trust and confidence to convey the said hereby devised premises to my said grandson, Clement C. Moore, and to his heirs, or to such person in fee as he may by will appoint, in case of his death prior to the death of the said Thomas B. Clarke."

The witness further stated, that Mr. and Mrs. Williamson have children, as have also Mr. and Mrs. Cochran; Thomas B. Clarke lived a while at Washington Hall; his son Clement was with him a part of the time.

The defendant then called—

John Pollock: he testified, that he surveyed the lot in question, with the adjoining lot, on the 24th of May, 1844, for Mr. and Mrs.

Williamson, Mr. and Mrs. Cochran, and Mr. Clarke; the property was then entirely vacant; they took possession of it then, and have been in possession ever since; there is a building on 118 which was put up after my survey; I was employed by Mr. Field; I did not see Williamson, Cochran, and Bayard Clarke about it; Mr. Field employed me for the estate of Mary Clarke, as he said; I do not know anything else about the possession except the survey, and that a house was erected; I cannot tell by whom.

John Clay testified: that he put a fence around the two lots 117 and 118 on the 28th of May, 1844, for Mr. and Mrs. Williamson, Mr. and Mrs. Cochran and Mr. Clarke; afterwards one Farney lived in a house after the fence was made; Mr. Field employed me to put up the fence, no other person; Mr. Field said he employed me for the heirs of Mary Clarke, naming them.

Wm. S. Hunt testified: That he, as a carpenter, built the house on 118 for Farney, the defendant, in the summer of 1844; he occupied it afterwards.

John P. Cumming testified: That the defendant Farney now lives in the house on No. 118, and has occupied it ever since it was built.

The plaintiff then proved the acts of the legislature, the death of Clement C. Moore, the petitions, reports, orders, and extracts, of which copies are hereto annexed.

The plaintiff then read in evidence a deed from Thomas B. Clarke to Peter McIntyre, and another from James A. Hamilton to Peter McIntyre, dated December 14, 1818, of which the following are copies; recorded for and at the request of Peter McIntyre, the 16th day of December, 1818, at 3 o'clock p. m.

This indenture, made this twentieth day of October, in the year of our Lord one thousand eight hundred and eighteen, between Thomas B. Clarke, of the city of New York, gentleman, of the first part, and Peter McIntyre, of the same place, of the second part: whereas the said Thomas B. Clarke, by virtue of sundry conveyances, acts of the legislature, and orders of the court of chancery of the State of New York, hath been empowered to sell, mortgage, or convey in satisfaction of any debt due from him to any person or persons, the southern moiety of the estate at Greenwich, devised by Mary Clarke, deceased, for the benefit of the said Thomas B. Clarke and his children, or any part thereof; and whereas the said Thomas B. Clarke is indebted to the said party of the second part in a large sum of money; now, therefore, this indenture witnesseth, that the said Thomas B. Clarke, in consideration of the premises, and of thirty-seven hundred and fifty dollars lawful money of the United States, to him in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, convey, and confirm unto the said party of the second part, his heirs and assigns forever, all those lots of grounds situated, lying, and being in the ninth ward of the city of New York, known and distinguished on a certain map of the property of the said Thomas B. Clarke, made by Amos Corning and Uzal W. Freeman, city surveyors, by the numbers of one hundred and seventeen (117) and one hundred and eighteen (118); also one hundred and thirty-one (131), one hundred and thirty-two (132), and one hundred and thirty-three (133); also one hundred and thirty-four (134), one hundred and thirty-five (135), one hundred and thirty-six (136), one hundred and thirty-seven (137), one hundred and thirty-eight (138), one hundred and thirty-nine (139); also one hundred and five (105), one hundred and six (106), one hundred and seven (107), one hundred and eight (108), and one hundred and nine (109); also sixty-four (64), sixty-five (65), sixty-six (66), and sixty-seven (67), bounded as follows: lots Nos. 117 and 118 are bounded westerly by the Hudson river; northerly by lot No. 119; easterly by the Tenth avenue; and southerly by Twenty-fifth street. Lots Nos. 131, 132, and 133 are bounded westerly on the Tenth avenue; northerly by lot No. 130; easterly by lot No. 134, and southerly by Twenty-fifth street. Lots Nos. 134, 135, 136, 137, 138, and 139 are bounded westerly by lots Nos. 130, 131, 132 and 133; northerly by lots Nos. 184, 185, 186, 187, 188 and 189; easterly by lot No. 140; and southerly by Twenty-fifth street. Lots Nos. 105, 106, 107, 108, and 109 are bounded northerly by Twenty-fifth street; easterly by lot No. 110; southerly by lots Nos. 66, 67, 68, 69 and 70; and westerly by lot No. 104. Lots Nos. 64, 65, 66, and 67 are bounded southerly by Twenty-fourth street; westerly by lot No. 68; northerly by lots Nos. 108, 109, 110 and 111, and easterly by lot No. 63: with all and singular the privileges and advantages, hereditaments, and appurtenances hereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances: to have and to hold the said premises unto the said party of the second part, his heirs and assigns forever. And the said Thomas B. Clarke for himself, his heirs, executors, and administrators, doth covenant, grant, promise, and agree to and with the said party of the second part, his heirs and assigns, that the above bargained premises in the quiet and peaceable enjoyment of the said party of the second part, his heirs and assigns, against all and every person lawfully claiming, or to claim, the whole or any part of the above-mentioned and described premises, shall and will warrant and defend forever.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, on the day and in the year first above written.

T. B. CLARKE. [L. S.]

Sealed and delivered in the presence of—
SAMUEL CURTIS.

STATE OF NEW YORK, *ss.*

On this twentieth day of October, in the year 1818, before me personally appeared Thomas B. Clarke, known to me to be the same person described in, and who executed this indenture, and he duly acknowledged that he executed the same. There being no alteration, I allowed the same to be recorded.

JOHN C. HAMILTON,
Commissioner.

REGISTER'S OFFICE,
City and County of New York, ss.

I have compared the preceding with an original record in this office, recorded in Liber 134 of Conveyances, at page 60, and do certify that the same is a correct copy therefrom, and of the whole of said original. I further certify that there is no official seal belonging to said office.

Given under my hand this 26th day of March, A. D. 1851.

CHARLISLE NORWOOD,
Deputy Register.

[See evidence as to approval of the foregoing deed by master in chancery, folio 139 and 180.]

Know all men by these presents, that whereas John Wallis and Henry Simmons, together with one Robert Stewart, having obtained three several judgments against the within grantor, Thomas B. Clarke, whereon three several writs of fieri facias were issued; and whereas all the estate, right, title, and interest of the said Thomas B. Clarke, to the premises within mentioned and described, together with divers other premises, was sold by the sheriff of the city and county of New York, under and by virtue of the aforesaid writs; and whereas all the estate, right, title, and interest of the said Thomas B. Clarke, so sold as aforesaid, was his life estate in and to the said premises; and whereas the said John Wallis and Henry Simmons became the purchasers thereof; and whereas the said John Wallis and Henry Simmons, by indenture bearing date the nineteenth day of April, in the year one thousand eight hundred and seventeen, and which was recorded in the office of the register in and for the city and county of New York, in Liber 120 of Conveyances, page 475, on the eighth day of May, one thousand eight hundred and seventeen, as by reference thereto will more fully and at large appear, conveyed to James A. Hamilton, of the city of New York, esquire, in trust for the benefit of the said Thomas B. Clarke, all their right, title, interest in and to the premises in the within indenture mentioned and described, together with divers other premises in the said indenture above referred to, as by reference to the record thereof will at large appear: Now, therefore, know ye, that I, James A. Hamilton, for the purpose of carrying into effect the said trust, and at the request of the said Thomas B. Clarke, which said request is testified by his having executed the within indenture, and in consideration of one dollar to me in hand paid by the within named Peter McIntyre, party of the second part, to the within indenture, have and by these presents do remise, release, and quit-claim, to the said Peter McIntyre, and to his heirs and assigns, all my right, title, and interest in and to the said twenty lots of ground particularly mentioned and described in the within indenture, together with the appurtenances, unto the said Peter McIntyre, his heirs and assigns, to his and their only proper use, benefit and behoof.

In virtue whereof, I have hereunto set my hand and seal, this fourteenth day of December, in the year of our Lord one thousand eight hundred and eighteen.

JAMES A. HAMILTON. [L. S.]

Sealed and delivered in the presence of—
JOHN C. HAMILTON.

STATE OF NEW YORK, *ss.*

On this fourteenth day of December, in the year 1818, before me personally appeared James A. Hamilton, known to me to be the same person described in, and who executed this instrument in writing, and he duly acknowledged that he executed the same. There being no alteration therein, I allow the same to be recorded.

JOHN C. HAMILTON,
Commissioner.

STATE OF NEW YORK,
City and County of New York, ss.

I, Samuel Osgood, register of the said city and county, do hereby certify, that I, as such register as aforesaid, have the custody of the records of conveyances, mortgages, and other instruments in writing, recorded and filed in the office of said register; that I have compared the preceding with the original record of an instrument, recorded in Liber 134 of Conveyances, page 62, in said office, and that the same is a correct transcript thereof, and of the whole of such record. And I further certify, that there is no official seal belonging to my said office of register.

In testimony whereof, I have hereunto set my hand this 20th day of December, in the year 1847.

SAMUEL OSGOOD,
Register.

The plaintiff then called as a witness N. Dane Ellingwood, who testified:

That he had seen the original deed from Clarke to McIntyre. It had on it the following certificate:

"Having examined the within deed, I approve of it, as to manner and form.

December 14th, 1818.

JAMES A. HAMILTON,
Master in Chancery."

I am acquainted with the handwriting of Hamilton; the foregoing certificate was in his handwriting; I copied the certificate of Hamilton, as master in chancery, from the original deed of Thomas B. Clarke to Peter McIntyre, when I saw it in Mr. King's office.

This evidence was objected to by the defendant; the objection was overruled, and the defendant excepted.

The deed from Hamilton to McIntyre was on the back of Clarke's deed, and the certificate was on the inside.

After the master's sale proceedings were had to compel the purchaser to complete his purchase. The following is an order made by the vice-chancellor:

At a court of chancery held for the State of New York, at the city of New York, on the fifteenth day of July, 1844.

Present, William T. McCoun, vice-chancellor of the first circuit.

MARIA HUMPHREYS, Administratrix, and Richard M. Clarke, Administrator, &c., of Elijah Humphreys, deceased,
vs.
PETER MCINTYRE.

On reading and filing notice of motion, and proof of service thereof, and a report of sale and certificate made by Philo T. Ruggles, esq., one of the masters of this court, bearing date on the 24th day of May, 1844, and affidavits, and a motion of Charles C. King, solicitor for the complainants, and after hearing Mr. King and Mr. Anthon for the motion in behalf of the complainants, and Mr. Ellingwood in opposition, and in behalf of the defendant, and of Mr. Edward H. Sheppard, the purchaser at the said sale—

It is ordered, that the said Edward H. Sheppard be discharged from his bid for, and from the purchase of, the lot known on the first map referred to in the decree of sale in this cause, and mentioned in the said report and certificate as lot No. 119 (one hundred and nineteen.)

And it is further ordered, that the said Edward H. Sheppard complete his purchase of the several lots forming parts of the mortgaged premises mentioned and described in the said decree of sale, and which on the said map are dsignated by the numbers following, to wit: Nos. 117 (one hundred and seventeen), 118 (one hundred and eighteen), 131 (one hundred and thirty-one), 132 (one hundred and thirty two), 134 (one hundred and thirty-four). 135 (one hundred and thirty-five), 136 (one hundred and thirty-six), 138 (one hundred and thirty-eight), 64 (sixty-four), 66 (sixty-six).

And that he pay over into the hands of the said master the balance of the amounts bid by him, the said Sheppard, for the said lots respectively, with the interest upon the said amount so bid by him, from the times when the same became payable, according to the terms of said sale, and that such purchase be completed, and the said balance be paid to the said master on or before the 15th day of August next, or that in default thereof, the said master re-advertise and re-sell the said lots Nos. 117, 118, 131, 132, 134, 135, 136, 138, 64, and 66, under the said decree of sale heretofore made in this cause, which are mentioned in his said report and certificate.

And it is further ordered, that unless the said Sheppard shall, prior to such sale, pay to the said master the full amount of the balance due on the former purchase by him, with all the costs and expenses subsequently incurred, such re-sale be made at the cost, expense, and risk of the said Edward H. Sheppard; and that in case the said lots Nos. 117, 118, 131, 132, 134, 135, 136, 138, 64, and 66, shall be re-sold in pursuance of this order, and on such re-sale shall not produce the amount at which the same were bid off by the said Sheppard at the said former sale, with the interest justly due and payable thereon, after deducting therefrom and retaining the amounts heretofore paid to the master on account of the said former purchase, that then the said Edward H. Sheppard pay to the said master the amount of such deficiency, or the difference between the sum at which the said lots Nos. 117, 118, 131, 132, 134, 135, 136, 138, 64, and 66, shall sell for less than the sum at which the same were bid off for by the said Sheppard at the said former sale, with the interest that may have accrued thereon, and the costs of the said re-sale, after deducting and applying as aforesaid the amount heretofore paid to the said master and mentioned in the said report and certificate.

And it is further ordered, that the said master also advertise and sell under the said decree and order the said lot No. 130 on the 10th avenue, and the said two lots situate at Mount Vernon, in the 12th ward, known as lots Nos. 43 (forty-three) and 44 (forty-four) on the map of the property, which is also mentioned in the said decree of sale, or so much thereof as may be necessary to pay the balance of the amount due the complainant, with interest and the costs and charges in this suit, and that the said lots Nos. 130, 43, 44, may be sold in such order either before or after the re-sale of the said lots Nos. 117, 118, 131, 132, 134, 135, 136, 138, 64, and 66, as shall be deemed most for the interest of the parties, and as the said master shall deem necessary, in order to pay and satisfy the said complainants for the amount due them for principal and interest and the costs of this suit, including the costs of this motion and of such re-sale, to be charged as costs in this cause.

That order was appealed from and affirmed by the chancellor. The reading of this order and the evidence was objected to by the defendant. The court overruled the objection and the defendant excepted.

Edward H. Sheppard was the purchaser at the master's sale, but he acted for Towle in the purchase; the chancellor affirmed the order on the ground that the title was good; the purchase was completed. I was employed by Towle, the plaintiff, to resist those proceedings in chancery, to compel the purchaser to complete the purchase.

Charles C. King, sworn for the plaintiff, testified: That he was the solicitor of Humphreys in the said foreclosure suit; I had the original deed of Thomas B. Clarke to Peter McIntyre in my hands, as solicitor, with the certificate of James A. Hamilton, master in chancery, endorsed upon it; also the deed from James A. Hamilton to Peter McIntyre; they were taken from my office by George McIntyre: he asked to look at the deeds; he took them and threw them out of the window, and some person ran away with them; they were never brought back; the chancellor affirmed the order, on the ground that the purchaser knew that the title was in dispute.

After the sale, the same day, I saw the plaintiff; I told him he had bought a disputed lot; he said he knew as much as I did about the title; he afterwards refused to take the title; I have no doubt in good faith.

Rufus McIntyre, being recalled, testified as follows:

George McIntyre is dead; he died four months since, in New Orleans; he had no family; he left the city seven or eight years ago; he had no fixed residence; I presume the deeds were in the hands of one of my brothers; my other brother is in California; my brother William showed me a bundle of papers, which he stated related to my father's business; he was a single man, and has been gone to California two years; he left a trunk containing papers; I examined the papers shortly after he left for California; the deed was not among them; the trunk was not locked; my father might have had access to it; Towle has often applied to me to get the deed; he offered to pay for it.

William B. Townsend, being sworn, testified as follows:

In 1818 or 1819, I knew the 20 lots contained in the deed from Thomas B. Clarke to Peter McIntyre; they were not then worth more than one hundred dollars a lot; Clarke was then boarding with his children with McIntyre, at Washington Hall.

N. Dane Ellingwood, being re-called, further testified, as follows:

I argued the motion before the chancellor; he did not place the decision on the ground stated by Mr. King; he put it upon the ground that the title had been decided to be good by the court for the correction of errors, and the vice chancellor put his decision upon the same ground.

The defendant's counsel then offered to prove—

1. That the acts were not for the benefit of the infants, but for the benefit of Thomas B. Clarke merely. (20 Wend., 376.)
2. That the orders of the chancellor had the effect to take the proceeds of their future interest in the property, and to apply the same to the father's debts, without giving them any benefit, by support or otherwise, out of the income of the life estate in other parts of the property. (20 Wend , p. 378.)
3. That under the acts and orders he actually aliened the lot on Broadway and all the southern moiety of the Greenwich property, excepting two lots, and that none of the children received any benefit from such alienation.
4. That the whole of this property was mortgaged or conveyed for old debts; that no proceeds were ever invested or secured, or ever received from the grantees or mortgagees.
5. That so far from providing for the children or protecting the estate, he suffered a large portion of the northern moiety to be sold for assessments, and was proceeding to dispose of the northern moiety for 21 years, when, on the 31st March, 1826, a bill was filed against him, on behalf of the children, and an injunction issued.
6. That the plaintiff, Mrs. Williamson, was, from the death of her mother, in August, 1815, supported entirely by one of her aunts; and that after about two years from the mother's death, the other children were supported by their friends, and were entirely neglected by their father, and that this was notorious in the city of New York, and would have been immediately known to any one making inquiry.

The plaintiff's counsel objected. The objection was sustained, and the defendant's counsel excepted.

The defendant's counsel then read the following deposition of Peter McIntyre, taken conditionally, he being too infirm to attend the trial.

Peter McIntyre, of number 99 Houston street, in the city of New York, being sworn and examined, testified as follows:

Q. What was the consideration of the deed executed to you by Thomas B. Clarke, bearing date the 20th of October, 1818?

A. I don't know how to answer that exactly; Mr. Clarke came to board with me at that time; Mr. Dickinson brought him there; Dickinson and Clarke came to me, and told me he had no money, but property he wanted to place in my hands, so as to board him and his children; he continued on, and there was a bill at Tammany Hall; he had been boarding there and had no money; he came to me and told me he had to pay that bill or go to jail, one or the other, and I agreed to pay it; I think it was about $150 that Mr. Mather, the keeper of Tammany Hall, had against him; occasionally he wanted a little money, which I always let him have, for the children's use, himself, and his son Clement; they boarded a considerable length of time; I can't tell exactly; two or three years; my books are all destroyed; I can't describe positively the manner in which the settlement took place; at different times; I remember at one time Mr. Hamilton, the master in chancery, was present, who signed off with him; I gave him two bonds or notes, one for $1,050 or $950, and one for $550 to pay for his youngest children that year; I was short of money at that time; the eldest children boarded with me; Clement continued for a length of time; I don't remember dates now; I took the lots in good faith and in confidence; Mr. Dickinson said it was all right.

Q. Was there any other consideration than that you have stated?

A. Only his board and his children; that made up the amount, I believe; he went away in my debt afterwards.

Q. Have you the bills or any entries in your books respecting these transactions?

A. No; I havn't any papers at all; they are all destroyed; I never expected to be called upon anything about the property.

Q. Are these your books of account? (Referring to four books in the room.)

A. I believe they are. Looking at them he says, "They are; they have been my books."

Q. What years do the accounts therein cover?

A. You see that by the dates. Mem.—The first book begins at page 20, and the first date is January 28th, 1816; all the dates to page 49 are in that same year where October 17th, 1816, appears; the next entry is December 1st, 1826, and the last entries are dated in 1827, on pages 59, 60, 61; it appears to be part of a book only, and much mutilated; other books are all subsequent to 1822, and running up irregularly to 1829.

Q. Were the bonds or notes you speak of, given before or after the execution of the deed?

A. After, I think.

Q. How long after?

A. I can't remember.

Q. Was the board bill contracted before or after the execution of the deed?

A. The board bill was contracting all the time.

Q. Was the deed executed after all the board bill had been contracted, or while it was contracting?

A. It was still going on, you know, the boarding.

Q. Was there any other consideration in whole or in part for the deed, except the board bills, and the two notes or bonds you speak of?

A. I paid for some dry goods—one bill, I know, some $300—and others occasionally, as they were created; the children's clothing; there were some taxes and assessments I paid for him, but I don't remember what they were; I remember paying at one time $10.

Q. Was there any other consideration, in whole or in part?

A. I don't remember, just now; I can't tell.

Q. Do you remember any other?

A. I think I paid something for Clement; his learning astronomy, I think; he came in for a bill; his father had no money, of course, and I paid it.

Q. Was this paid before or after the execution of the deed?

A. Well, that I don't remember exactly, but it was all the same; they were in the house, and the boarding bill was going on.

Q. How long did Mr. Clarke board with you?

A. That I can't remember; two or three years; I think it was three years.

Q. How many of his children were with him?

A. Well, there were three of them sometimes, but not all the time; Clement continued all the time his father was there.

Q. Did Clement die while he was at your house?

A. No; he died over at Hoboken.

Q. How soon did he die after he left you?

A. I don't remember.

Q. Which of the other children was with Mr. Clarke at your house?

A. The oldest girl and the next one.

Q. Was any son there, excepting Clement?

A. No; I believe not; I don't remember exactly; they lived in apartments of their own in my house; I was not in the habit of seeing them often.

Q. So far as you can recollect, was any son there except Clement?

A. Not that I remember; I can't remember now.

Q. How long were the two daughters there?

A. That I can't tell; my wife had the management; she is dead.

Q. Can you tell whether they were there one month or one year?

A. Oh, they were there more than a month, of course.

Cross-examination.

Q. What is your age?

A. About seventy-nine.

Q. How long is it since you left off business?

A. It is about twelve years; my wife died in 1842, and I have done no business since.

Q. Are you at present in firm health and able to go about?

A. No; I am very feeble; I have not been out of doors for two years.

Q. What has become of the rest of your books?

A. I don't know—moving; and the servants have taken them to light fires.

Q. Did you pay the bonds or notes that you have mentioned?

A. I paid them at maturity.

Q. Had you a settlement with Mr. Clarke at the time that Mr. Hamilton, the master in chancery, was present?

A. Yes; he drew the bonds, I believe.

Q. Was that the same time that you got the deed?

A. Mr. Hamilton was present when I got the deed; but I forget whether it was the same day we had the settlement or not; all the settlements were submitted to Mr. Hamilton for his approval.

P. McINTYRE.

Sworn this 27th of March, 1851.

THOMAS J. OAKLEY.

The court thereupon ruled, that the plaintiff was entitled to a verdict for the premises claimed, to which ruling the defendant excepted.

The jury, pursuant to such direction of the court, found a verdict for the plaintiff.

THOS. J. OAKLEY.

Will of Mary Clarke.

In the name of God, amen. I, Mary Clarke, of the city of New York, widow and relict of Thomas Clarke, late of the same place, gentleman, at present of sound and disposing mind and memory, for which I bless God, do make, publish, and declare this my last will and testament in manner following, that is to say: I will that all such debts as I shall justly owe at the time of my decease, and my funeral charges and expenses, be first paid by my executors hereinafter named. And as to my estate, real and personal, I dispose thereof as follows: First, I give and devise unto the Reverend Benjamin Moore and Charity, his wife, and to their heirs in fee, all that certain dwelling-house and that part of the farm whereon I now live, at Greenwich, called Chelsea, and all the buildings and improvements thereon erected, bounded southerly by the land of said Benjamin Moore, easterly by the highway called Greenwich road, and northerly by a line to be drawn, commencing at a point in the said road, twelve feet to the north of the intersection of the fence which now stands behind the house occupied by John Platt, and to run as nearly parallel to the said fence as a straight line down to Hudson's river will permit, so as to strike a cedar just planted in the ground not far from high-water mark, and westerly by the Hudson aforesaid: to have and to hold the said hereby described premises with the appurtenances to the said Benjamin Moore and Charity, his wife, and to their heirs in fee. Also, I give and devise unto the said Benjamin Moore and Charity, his wife, the one equal undivided half part of my salt meadow, situate at a place called Harga, on Jersey shore, in the county of Bergen: to hold the same to them and their heirs in fee. I give and bequeath unto the said Benjamin Moore all my farming utensils of every description and all my carriages, both for pleasure and for service, my horses and cattle of every description; and also all my slaves, to wit, Thomas and Ann, his wife, Charles and Hester. I give and bequeath to my daughter Charity all my furniture and wearing apparel. Item.—I give and devise unto my grandson, Clement C. Moore, son of the Rev. Benjamin Moore, twelve hundred acres of land situate in the patent of Kayaderosseras, with the appurtenances, the same now being divided into good farms and under lease to different tenants, on the counterparts of whose leases I have written his name as designating particularly that part of the said patent included in this devise: to have and to hold the said twelve hundred acres and premises, with the appurtenances, to the said Clement C. Moore and to his heirs in fee. Item.—I give and devise to the said Clement C. Moore one other lot, a farm situate in the said patent, and distinguished by lot number nine in the thirtieth allotment of the said patent, containing one hundred and six acres: to hold the same to the said Clement C. Moore and to his heirs in fee. Item.—I give and devise unto the said Clement C. Moore and Thomas B. Clarke, a natural son of my son Clement, and to their heirs, all those four certain lots of land situate in the said patent, containing in the whole two thousand seven hundred and seventy-seven acres, of which there is contained in the eighteenth allotment of the said patent five hundred acres, in the thirtieth allotment five hundred and thirty-seven acres and a half, and in the twenty-fourth allotment one thousand two hundred and thirty-four acres, and in the twenty-fifth allotment five hundred and five acres and a half: to hold the same to them the said Clement C. Moore and Thomas B. Clarke, and to their heirs in fee. Item.—I give and devise unto the said Benjamin Moore and Charity, his wife, and to Elizabeth Maunsell and their heirs forever, as joint tenants and not as tenants in common, all that certain lot of land number eight in the said thirteenth allotment of the said patent, containing one hundred acres; also all that part of my said farm at Greenwich aforesaid, called Chelsea, lying to the northward of the line hereinbefore directed to be drawn from the Greenwich road to the Hudson river twelve feet to the northward of the fence standing behind the house now occupied by John Hall, bounded southerly by the said line, northerly by the land of Cornelius Ray, easterly by the Greenwich road, and westerly by the Hudson, including that part of my said farm now under lease to Robert Lennox; also all my house and lot, with the appurtenances known by number seven within the limits of the prison, and now occupied by Thomas Byron: to have and to hold the said hereby devised premises to the said Benjamin Moore and Charity, his wife, and Elizabeth Maunsell and to the survivor or survivors of them, and the heirs of such survivor, as joint tenants and not as tenants in common, in trust to receive the rents, issues, and profits thereof, and to pay the same to the said Thomas B. Clarke, natural son of my late son Clement, during his natural life; and from and after the death of the said Thomas B. Clarke, in further trust to convey the same to the lawful issue of the said Thomas B. Clarke, living at his death, in fee; and if the said Thomas B. Clarke shall not leave any lawful issue at the time of his death, then in the further trust and confidence to convey the said hereby devised premises to my said grandson Clement C. Moore and to his heirs, or to such person in fee as he may by will appoint in case of his death prior to the death of the said Thomas B. Clarke. Item.—I give and devise unto the said Benjamin Moore and Charity, his wife, and Elizabeth Maunsell, and to their heirs forever, as joint tenants and not as tenants in common, six hundred acres of land, with the appurtenances, situate in the said patent of Kayaderosseras, and divided into farms now under lease to different tenants, on the counterpart of whose leases I have marked the name of Clement Clarke, so as to designate the lots hereby devised; also all that lot on the opposite side of Greenwich road now in possession of Mr. Turner; also the wood lot adjoining the same—the said two lots containing about thirty acres in the whole: to hold the said hereby devised premises to them the said Benjamin Moore and Charity, his wife, and Elizabeth Maunsell, and to the survivors or survivor of them, and the heirs of such survivor, as joint tenants and not as tenants in common, in trust to receive the rents, issues, and profits thereof, and to pay the same to Clement Clarke, a natural son of my late son Clement, during his natural life, and from and after the death of the said Clement, in further trust and confidence to convey the same to the lawful issue of the said Clement living at his death; and in case the said

Clement should die without leaving lawful issue, then on the further trust and confidence to convey the same, to my grandson Clement, son of the said Benjamin Moore, and to his heirs in fee, or to such person as he may by will appoint in case of the death of the said Clement Moore prior to that of the said Clement Clarke. Item.—I give and devise unto the said Benjamin Moore and Charity, his wife, and Elizabeth Maunsell, and to their heirs forever, as joint tenants and not as tenants in common, all that house and lot of ground situate in Hague street in the city of New York; also, all that lot of land situate in the patent of Kayaderosseras, and lying on the Mohawk river, in the possession of one Northrup; also, the lot of land situate in the said patent in the possession of Hacaleah Foster; also, seven hundred and fifty-one acres of land lying in the twenty-third allotment of the patent aforesaid; also, six hundred acres divided into farms now leased to different tenants on the counterparts of whose leases I have endorsed the name of Samuel Clarke, so as to designate the farms included in this devise of six hundred acres: to hold the same to the said Benjamin Moore and Charity, his wife, and Elizabeth Maunsell, and to the survivors or survivor of them, and to the heirs of such survivor, as joint tenants and not as tenants in common, in trust to receive the rents, issues, and profits thereof, and to pay the same to Samuel Clarke, a natural son of my late son Clement, during his natural life, and from and after his death in the further trust and confidence to convey the same in fee to such lawful issue of the said Samuel as he may leave at the time of his death; and if the said Samuel shall die without leaving lawful issue living at the time of his death, then in the further trust to convey the same in fee to the said Clement Moore, son of the said Benjamin Moore, and to his heirs in fee, or to such person as he may by will appoint in case of his death prior to that of the said Samuel Clarke. Item.—I give and bequeath unto Charity Clarke, natural daughter of my late son Clement, fifty-five pounds, to be paid quarterly, and continued annually until she marries; the rent proceeding from the lots leased to Mr. Turner and John Platt to be applied to this purpose. Also, I give and bequeath unto her five hundred pounds, to be paid at her marriage or arrival at full age, whichever event may first happen. It is also my will that she be maintained frugally out of the moneys now at interest, and that a fund be kept for that purpose by my executors until her marriage or arrival at full age as aforesaid. Item.—I give and bequeath unto Mary, natural child of my late son Clement, the annual sum of fifty pounds and a frugal maintenance out of the moneys now at interest, and that a fund be kept by my executors for that purpose until her marriage. Also, I give to her the sum of five hundred pounds, to be paid at her marriage or arrival at full age, whichever event may first happen. Item.—I give and bequeath unto the said

Thomas B. Clarke one thousand pounds, to be paid to him within three months after my decease. Item.—I give and bequeath unto my daughter Mary, wife of Sir Gilbert Affleck, one thousand and five hundred pounds sterling, to be paid in one year after my decease. It is my further will that Richard, my slave, be manumitted by my executors on his arrival at full age, and that in the meantime he be put out to learn some trade, and be supported out of my estate during such his service. I do further direct that Rachel, my slave, be sold immediately after my decease by my executors; and all the rest, residue, and remainder of my estate, real and personal, of what nature soever and wheresoever, not before herein disposed of, I give, devise, and bequeath unto the said Clement Moore, and to the said five children of my son Clement, and to their heirs, executors, and administrators forever, as tenants in common, equally to be divided between them, share and share alike, at such times as my executors may think discreet. And lastly, I do hereby nominate, constitute, and appoint my son-in-law the Reverend Benjamin Moore and Charity, his wife, their son, the said Clement C. Moore, Elizabeth Maunsell and the said Thomas B. Clarke, executors and executrixes of this my last will and testament, hereby revoking all former and other wills by me made.

In witness whereof, I, Mary Clarke, the testatrix, have to this my last will and testament, consisting of two sheets of paper, set my hand seal this sixth day of April, in the year of our Lord one thousand eight hundred and two.

MARY CLARKE. [L. S.]

Signed, sealed, published, and declared by the said Mary Clarke within named, as and for her last will and testament, in the presence of us, who, in her presence, and at her request, have hereunto set our names as witnesses—[the name "Moore," between the eighteenth and nineteenth lines fourth page, and the words "be paid," between the twelfth and thirteenth lines seventh page, being underlined.]

THOMAS SALTER,
J. B. PROVOST,
PETER DAYTON.

Petition of T. B. Clarke to the Legislature.—March 2, 1814.

To the honorable the Legislature of the State of New York, in Senate and Assemby convened:

The petition of Thomas B. Clarke, of the city of New York, humbly showeth:

That Mary Clarke, late of the city of New York, deceased, widow and relict of Thomas Clarke, late of the same place, gentleman, deceased, in and by her last will and testament, bearing date the sixth day of April, in the year of our Lord one thousand eight hundred and two, did, among other things, devise unto Benjamin Moore, and Charity, his wife, and to Elizabeth Maunsell, and to their heirs forever, as joint tenants, and not as tenants in common, certain real estate described in the said will, in trust, nevertheless, to receive the rents, issues, and profits thereof, and to pay the same to your petitioner, the grandson of the said testatrix, during his natural life, and from and after the death of your petitioner, in further trust to convey the same to the lawful issue of your petitioner living at his death, in fee, and if your petitioner should not have any lawful issue at the time of his death, then in the further trust and confidence to convey the said devised premises to Clement C. Moore, also the grandson of the said testatrix, and to his heirs or to such persons in fee as he might by will appoint in case of his death, prior to that of your petitioner.

And your petitioner further showeth unto the honorable the legislature, that the said Benjamin Moore, and Charity, his wife, and the said Elizabeth Maunsell, the said trustees hereinbefore named, have, in and by a certain instrument in writing, under their hands and seals, bearing date the eleventh day of January last, consented and agreed to all such acts as the legislature of this State might deem proper to pass for the benefit and relief of your petitioner, or of his issue, his heirs, and assigns, in and concerning the premises, and did thereby likewise request that some other person or persons might be substituted for them, in their place and stead, as trustees aforesaid, and that they might be discharged from their said trust.

And your petitioner further showeth unto the honorable the legislature, that Clement C. Moore, the devisee in remainder, upon the contingency happening in the said will, hath, by a certain instrument in writing, under his hand and seal, bearing date the said eleventh day of January last, consented also to all such acts as the legislature might deem proper for the benefit and relief of your petitioner, or of his issue, heirs, and assigns, in and concerning the premises, the title, claim, and interest of the said Clement C. Moore, in and to the said lands, tenements, hereditaments, and real estate, in anywise notwithstanding.

And your petitioner further showeth to your honorable body, that by reason of many circumstances, the situation of the estate devised, and the phraseology of the said will, the said estate cannot be so improved and made productive as to answer the benevolent purposes of the testatrix.

And your petitioner further showeth, that he hath married and hath issue, to wit, five children, and that he and his family cannot derive the benefit contemplated by the said will without legislative aid in the premises; that such aid is absolutely necessary for the support of your petitioner and his family.

Wherefore, your petitioner humbly prays your honorable body for leave to introduce a bill into the legislature, making provision in the premises, and that the said bill may be passed into a law. And your petitioner will ever pray, &c.

T. B. CLARKE.

Endorsed: Thomas B. Clarke's petition. In assembly, March 2d, 1814. Read and referred to Messrs. D. B. Ogden, Furman, and Kissam.

STATE OF NEW YORK,
Secretary's Office.

I have compared the preceding with an original petition on file in this office, and do certify that the same is a correct transcript therefrom, and of the whole of said original. And I further certify, that I have made diligent search among the records and papers in this office, and that I do not find any paper or document relating to any application of Thomas B. Clarke, except the petition, of which the above is a transcript, and a deed from Clement C. Moore to Thomas B. Clarke, bearing date the 21st day of February, 1815, recorded in Book of Deeds, No. 39, page 140, &c. Nor do I find any evidence in this office that any testimony was taken or read before the legislature, or any committee thereof, in relation to the application of said Thomas B. Clarke.

In testimony whereof, I have hereunto affixed the seal of this office, at the city of Albany, the fifth day of December, in [L. S.] the year of our Lord one thousand eight hundred and forty-four.

ARCH'D CAMPBELL,
Dep. Sec. of State.

Extract from Assembly Journal.

March 7, 1814.—Mr. D. B. Ogden, from the select committee, to whom was referred the petition of Thomas B. Clark, reported: That the facts stated in the petition are true, and that in the opinion of the committee the prayer thereof ought to be granted; they have prepared a bill for that purpose, and directed their chairman to ask for leave to bring in the same.

Ordered, That leave be given to bring in such bill.

Mr. Ogden, according to leave, brought in the said bill, entitled "An act for the relief of Thomas B. Clarke," which was read the first time, and by unanimous consent was also read a second time, and committed to a committee of the whole house.

Act of April 1, 1814.

Whereas Mary Clarke, late of the city of New York, deceased, widow, and relict of Thomas Clarke, late of the same place, gentleman, deceased, in and by her last will and testament, bearing date the sixth day of April, in the year of our Lord one thousand eight hundred and two, did, among other things, devise unto Benjamin Moore and Charity, his wife, and to Elizabeth Maunsell, and to their heirs forever, certain lands and real estate; to have and to hold to the said Benjamin Moore and Charity, his wife, and to the said Elizabeth Maunsell, and to the survivors or survivor of them, and to the heirs of such survivor as joint tenants, and not as tenants in common, in trust, to receive the rents, issues, and profits thereof, and to pay the same to Thomas B. Clarke, one of the devisees of the testatrix during his natural life; and from and after the death of the said Thomas B. Clarke, in further trust, to convey the same to the lawful issue of the said Thomas B. Clarke, living at his death, in fee; and if the said Thomas B. Clarke should not have any lawful issue at the time of his death, then, in the further trust and confidence, to convey the said devised premises to Clement C. Moore, also one of the devisees of the said testatrix, and to his heirs, or to such person in fee as he might by will appoint, in case of his death, prior to that of the said Thomas B. Clarke. And whereas it appears to the legislature that the property so devised as aforesaid is nearly unproductive, and, in its present situation, is incapable of being improved, so as to yield an adequate income for the maintenance and support of the said Thomas B. Clarke and his family, whereby the benevolent intentions of the testatrix will be defeated, without the interposition and aid of the legislature. And whereas the said Benjamin Moore and Charity, his wife, and the said Elizabeth Maunsell, the said trustees named in the said will, in and by a certain instrument under their hands and seals, bearing date and duly executed by them on the eleventh day of January last, did consent and agree to all such acts as the legislature of this State should deem meet and proper to make for the benefit and relief of the said Thomas B. Clarke, or of his issue, heirs and assigns, in and concerning the premises; and also did, by the said instrument in writing, consent and desire that some other person or persons might be substituted for them in their place and stead, as trustees aforesaid, and they be discharged from the said trust. And whereas Clement C. Moore, the person named in the said will, and entitled to the contingent remainder, hath, by a certain other instrument in writing, under his hand and seal, bearing date and duly executed by him on the said eleventh day of January last, consented and agreed to all such act or acts as the legislature might deem proper to make for the benefit and relief of the said Thomas B. Clarke: therefore,

I. Be it enacted by the people of the State of New York, represented in senate and assembly, That it shall and may be lawful for the court of chancery, on the application of the said Thomas B. Clarke, to constitute and appoint one or more trustees to execute and perform the several trusts and duties specified and set forth in the said in part recited will and testament and in this act, in the place and stead of the said Benjamin Moore and Charity, his wife, and the said Elizabeth Maunsell, who are hereby discharged from the trusts in the said will mentioned: Provided, that it shall be lawful for the said court at any time thereafter, as occasion may require, to substitute and appoint other trustee or trustees in the room of any of those appointed in this act, in like manner as is practised in the said court in cases of trustees appointed therein; and such trustee or trustees so appointed are hereby vested with the like powers as if he or they had been named and appointed in and by this act.

II. And be it further enacted, That the trustees appointed or to be appointed by or under the authority of this act, or the major part of them, shall, as soon as conveniently may be, partition and divide all that certain tract of land described in the said last will and testament as follows, viz: "All that part of my said farm at Greenwich aforesaid, called Chelsea, lying to the northward of the line hereinbefore directed to be drawn from the Greenwich road to the Hudson's river, twelve feet to the northward of the fence standing behind the house now occupied by John Platt, bounded southerly by the said line, northerly by the land of Cornelius Ray, easterly by the Greenwich road, and westerly by the Hudson, including that part of my said farm now under lease to Robert Lenox," into two equal parts, one moiety whereof shall be held by them to the uses and upon the trusts declared in and by the said will, and the remaining moiety shall be subdivided by the said trustees, or the major part of them, into so many lots as they, or the major part of them, may think most likely to effect an advantageous sale thereof; and after having completed such subdivision, the said trustees, or a major part of them, are hereby authorized and required, within a convenient time thereafter, not to exceed six months, except at the request of the said Thomas B. Clarke, to sell and dispose of the said last mentioned subdivided moiety; and also that certain house and lot described in the said last will and testament as follows, viz: "All my house and lot, with the appurtenances, known by number seven, within the limits of the prison, and now occupied by Thomas Byron," in such manner and upon such terms as they, or a major part of them, may deem best for the interest of the several parties interested therein, and thereupon to make and execute good and sufficient deeds or conveyances in the law to the purchaser or purchasers thereof, which deeds or conveyances shall operate to convey to the said purchaser or purchasers respectively, all the estate, right and title and interest which the said Mary Clarke had at the time of her death in and to the said premises.

III. And be it further enacted, That the said trustees, or a major part of them, within a convenient time after the said sale, for the purpose of securing the principal of the proceeds thereof to the uses to and according to the trust declared in and by the said will, and for the further purpose of creating an income for the benefit and support of the said Thomas B. Clarke, his family and children, shall invest the said proceeds in any public stock of the United States or of this State, or bank stock, or shall put the same out at interest on real security, from time to time, as they, or a majority of them, shall deem most for the interest of the parties concerned therein; and the said trustees, or a majority of them, shall, out of the interest or income of the said proceeds, in the first place, set apart and reserve for the first four years, eight hundred dollars a year, and from and after the expiration of the said four years, one thousand dollars a year, during the natural life of the said Thomas B. Clarke; which said annual reservations, together with the interest thereof, from time to time accruing, are to be invested in stock, or put out on real security by the said trustees, or a majority of them, for the purpose of creating an accumulating fund, at a compound interest, during the life of the said Thomas B. Clarke, for the benefit of his children after his decease, when the same is to be disposed of by the said trustees, or a majority of them, to the uses according to the trusts declared in and by the said last will and testament, and the residue of the said income that may remain from year to year, after making the reservations aforesaid, shall be paid by the said trustees, or a major part of them, to the said Thomas B. Clarke, for his use and benefit, and for the maintenance of his family, and education and support of his children.

IV. And be it further enacted, That the said principal sum of money arising from the said sales, and by this act directed to be vested or put out at interest aforesaid, shall be held by the said trustees, or the major part of them, according to the said will; that is to say: in trust to be assigned or paid over to the lawful issue of the said Thomas B. Clarke, living at his death; and if the said Thomas B. Clarke shall not leave any lawful issue at the time of his death, then to be assigned or paid over to Clement C. Moore, or his representatives, or to such person as the said Clement C. Moore may, by will, appoint in case of his death prior to that of the said Thomas B. Clarke.

V. And be it further enacted, That it shall and may be lawful for the said trustees, or a major part of them, during the natural life of the said Thomas B. Clarke, from time to time, to demise and let for the best rents that can be procured, and to such person or persons, with such covenants, and upon such terms, limitations, and conditions as the said trustees, or the major part of them, shall think expedient, all or any part or parcel of the land first above mentioned in the second section of this act, for and during any term of years not exceeding twenty-one, and to renew such leases or demises, to take effect from the date and execution thereof, and not in future or remainder, if such trustees, or the major part of them, shall judge proper, and to collect and receive the rents and profits thereof, and to pay the same over to the said Thomas B. Clarke, as they shall be received for and during his natural life: Provided, that no lease shall be made, executed, or renewed under this section, but by the approbation and consent of the said Thomas B. Clarke: and provided, further, that upon the death of the said Thomas B. Clarke, the unexpired term or terms of any such leases shall be held by the trustees, or a major part of them, in trust, for the uses and purposes mentioned in the said before in part recited will, and none other, and to be deemed part and parcel of the estate thereby devised, according to the true intent and meaning of the said will.

VI. And be it further enacted, That in every case not otherwise provided for by this act the trustees appointed or to be appointed in virtue thereof shall be deemed and adjudged trustees under the said will, so far as relates to the premises mentioned and described in the recital to this act, in like manner as if such trustees had been originally named and appointed in the said will, and they shall in all respects be liable to the power and authority of the court of chancery for or concerning the trusts created by this act.

Petition of T. B. Clarke.—May 1, 1815.

To the honorable the Legislature of the State of New York, represented in Senate and Assembly:

The petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That since the passing of the act entitled "An act for the relief of Thomas B. Clarke," passed April 1st, 1814, Clement C. Moore, in the said act named, and who under the will of Mary Clarke had a contingent interest in the estate thereby devised to the trustees for the benefit of your petitioner and his family, has released all his interest in the said property to your petitioner, his heirs and assigns, by deed bearing date the 21st February, 1815, whereby your petitioner and his infant children are the only persons interested in the said estate.

That your petitioner has made every effort to procure a fit and proper person to execute the trusts created in and by the said act, but from the extent and nature of the duties required to be performed, he has not been able to prevail upon any suitable person to undertake the performance thereof.

Your petitioner therefore humbly prays for leave to present a bill supplemental to the said act and to amend the same, and that the same may be enacted into a law. And he will ever pray, &c.

T. B. CLARKE.

SENATE CHAMBER,
Clerk's Office, Albany, Dec. 4th, 1844.

I hereby certify that the foregoing is a true copy of a petition on file among the legislative papers belonging to the senate of the State of New York remaining in this office, said petition presented March 1st, 1815. I further certify that I have made diligent search among the legislative papers belonging to the said senate for the years 1814, 1815, and 1816, and I cannot find among said papers any other petition or paper relating to any application or petition of Thomas B. Clarke, nor do I find any evidence among said papers or remaining in this office that any testimony was taken or produced before the said senate touching any application or petition of Thomas B. Clarke except what appears in said statutes relating thereto printed in the session laws of this State.

ISAAC R. ELWOOD,
Clerk of the Senate of the State of N. Y.

Indenture.

This indenture, made the twenty-first day of February, in the year of our Lord one thousand eight hundred and fifteen, between Clement C. Moore, of the city and county of New York, gentleman, of the first part, and Thomas B. Clarke, of the same place, gentleman, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar, to him in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents doth grant, bargain, sell, remise, release, and forever quit-claim, unto the said party of the second part, his heirs and assigns, forever, all the estate, right, title, interest, property, claim, and demand whatsoever of him, the said party of the first part, of, in and to all those certain tracts, pieces or parcels of land described in the last will and testament of Mary Clarke, late of the city of New York, widow, deceased, as follows, viz: All that part of my said farm at Greenwich aforesaid, called Chelsea, lying to the northward of the line herein before directed to be drawn from the Greenwich road to the Hudson river, twelve feet to the northward of the fence standing behind the house now occupied by John Platt, bounded southerly by the said line, northerly by the land of Cornelius Ray, easterly by the Greenwich road, and westerly by the Hudson, including that part of my said farm now under lease to Robert Lenox. And also all my house and lot, with the appurtenances, known by number seven, within the limits of the prison, and now occupied by Thomas Byron, as by the said last will and testament, bearing date the sixth day of April, one thousand eight hundred and two, or the record thereof in the office of the clerk of the supreme court, will more fully appear, together with all and singular the appurtenances: to have and to hold the said premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use of the said party of the second part, his heirs and assigns, forever.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

CLEMENT C. MOORE. [L. S.]

Sealed and delivered in the presence of—
BEV. ROBINSON.

CITY AND COUNTY OF NEW YORK, *ss.*

Personally appeared before me, James A. Hamilton, master in chancery in and for the State of New York, this twenty-second day of February, in the year one thousand eight hundred and fifteen, Beverly Robinson, to me personally known, who being sworn, deposed that he saw Clement C. Moore (to him well known to be the person described in the within instrument) execute the same as his voluntary act and deed, and that the said deponent subscribed his name as a witness to the same. All which being satisfactory to me, I do allow it to be recorded.

JAMES A. HAMILTON,
Master in Chancery.

Recorded February 28th, 1815, at noon, and agrees with the original, compared therewith by

ARCHD. CAMPBELL,
Dep. Sec. of State.

STATE OF NEW YORK,
Secretary's Office.

I have compared the preceding with a certain indenture recorded in this office, in book of deeds No. 39, page 140, &c., and do certify that the same is a correct transcript therefrom and of the whole of said indenture. (Page 2, between lines 7 and 8, one line interlined.)

In testimony whereof, I have hereunto affixed the seal of this office, at the city of Albany, the eighteenth day of November, in the year of our Lord one thousand eight hundred and forty four.

[L. S.]

ARCHD. CAMPBELL,
Dep. Sec. of State.

Extract from Senate Journal.

March 1, 1815.—Mr. Van Buren asked for leave to bring in a bill, entitled "An act supplemental to the act for the relief of Thomas B. Clarke," passed April 1st, 1814.

Thereupon ordered, that leave be given to bring in such bill.

Mr. Van Buren, according to leave, brought in the said bill, which was read the first time, and by unanimous consent was also read a second time and committed to a committee of the whole.

Act of March 24, 1815.

An act supplemental to the "Act for the relief of Thomas B. Clarke," passed April 1, 1814.

Whereas since the passing of the act entitled "An act for the relief of Thomas B. Clarke," Clement C. Moore, in the said act named, by an indenture duly executed by him, and recorded in the office of the secretary of this State, and bearing date the twenty-first day of February, in the year one thousand eight hundred and fifteen, hath, for the consideration therein expressed, and in due form of law, released and conveyed unto the said Thomas B. Clarke, his heirs and assigns forever, all the estate, right, title, interest, property, claim and demand whatsoever, of the said Clement C. Moore, of, in and to the real estate mentioned in the said act, whereby the said real estate became exclusively vested in the said Thomas B. Clarke and his children. And whereas the said Thomas B. Clarke hath prayed the legislature to alter and amend the said act, particularly in relation to the interest of the said Clement C. Moore, and the execution of certain of the trusts in the said act mentioned: therefore,

I. Be it enacted by the people of the State of New York, represented in senate and assembly, That all the beneficial interests and estate of the said Clement C. Moore, or those under him, arising or to arise by virtue of the act to which this is a supplement, or by the will mentioned in the said act, shall be, and the same is hereby vested in the said Thomas B. Clarke, his heirs and assigns, and so much of the act to which this is a supplement as is repugnant thereto, and so much thereof as requires the trustees to set apart and reserve a certain annual stipend out of the interest or income of the property thereby directed to be sold for the purpose of creating an accumulating fund at compound interest during the life of the said Thomas B. Clarke, and so much of the said act as requires the several duties therein enumerated to be performed by trustees to be appointed by the court of chancery, as therein mentioned, be, and the same is hereby repealed.

II. And be it further enacted, That the said Thomas B. Clarke be, and is hereby authorized and empowered to execute and perform every act, matter and thing, in relation to the real estate mentioned in the act to which this is a supplement, in like manner and with like effect that trustees duly appointed under the said act might have done, and that the said Thomas B. Clarke apply the whole of the interest and income of the said property to the maintenance and support of his family and the education of his children.

III. And be it further enacted, That no sale of any part of the said estate shall be made by the said Thomas B. Clarke, until he shall have procured the assent of the chancellor of this State to such sale, who shall, at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he shall think proper, shall be vested in the said Thomas B. Clarke, as trustee; and further, that it shall be the duty of the said Thomas B. Clarke annually to render an account to the chancellor, or to such person as he may appoint, of the principal of the proceeds of such sale only, the interest being to be applied by the said Thomas B. Clarke in such manner as he may think proper, for his use and benefit, and for the maintenance and education of his children; and if, on such return, or at any other time, and in any other manner, the chancellor shall be of opinion that the said Thomas B. Clarke hath not duly performed the trust by this act reposed in him, he may remove the said Thomas B. Clarke from his said trust, and appoint another in his stead, subject to such rules as he may prescribe in the management of the estate hereby vested in the said Thomas B. Clarke as trustee.

Petition of T. B. Clarke to the Chancellor.—28th June, 1815.

To the Honorable James Kent, Chancellor of the State of New York:

The petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That Mary Clarke, late of the city of New York, widow, deceased, the grandmother of your petitioner, in and by her last will and testament, bearing date the sixth day of April, in the year of our Lord one thousand eight hundred and two, did, among other things, devise unto Benjamin Moore, and Charity, his wife, and Elizabeth Maunsell, and to their heirs forever, certain premises in the fifth ward of the city of New York, consisting of a house and lot fronting on Broadway, and then occupied by one Thomas Byron; and certain other premises situate at Greenwich, in the ninth ward of the said city of New York, on the Hudson's river, being all that part of the farm of the said Mary Clarke, at Greenwich aforesaid, called Chelsea, lying on the northward of a certain line, by her, the said Mary Clarke, in and by her said last will and testament, directed to be drawn from the Greenwich road to the Hudson's river, twelve feet to the northward of the fence standing behind the house then occupied by John Platt, bounded southerly by the said line, northwardly by the land of Cornelius Ray, easterly by the Greenwich road, and westerly by the Hudson river, including that part of the said farm under lease to Robert

Lenox, with the appurtenances: to have and to hold to the said Benjamin Moore, and Charity, his wife, and the said Elizabeth Maunsell, and to the survivors and survivor of them, and the heirs of such survivor, as joint tenant and not as tenant in common, in trust to receive the rents, issues, and profits thereof, and to pay the same to your petitioner, one of the devisees of the testatrix, during his natural life; and from and after the death of your petitioner, in further trust to convey the same to the lawful issue of your petitioner living at his death, in fee; and if your petitioner should not have any lawful issue at the time of his death, then in the further trust and confidence to convey the said devised premises to Clement C. Moore, also one of the devisees of the said testatrix, and to his heirs, or to such person in fee as he might by will appoint in case of his death prior to that of your petitioner, as by the said last will and testament of the said Mary Clarke, deceased, reference being had to the same, fully and at large may appear.

And your petitioner further showeth, that the said devised premises, situate at Greenwich aforesaid, contain thirty-nine acres and one-half acre of land, or thereabouts, and that four acres and three-quarters of an acre thereof, or thereabouts, were under lease to the said Robert Lenox, in the said will named, for a term, whereof about three years are yet unexpired, at the yearly rent of twenty-five dollars per acre per annum.

And your petitioner further showeth, that since the death of the testatrix, about three roods and twenty-five perches of the said premises have been leased by the trustees in the said will named by your petitioner as their attorn y, to the said Robert Lenox for a term of years, whereof about ten years are unexpired, at the rate of the yearly rent of forty-five dollars per acre; and ten acres and one rood of the same premises, or thereabouts, have been leased by the said trustees by your petitioner as their attorney, to Michael Hagan, for a term, whereof ten years, or thereabouts, are unexpired, at the yearly rent of four hundred and sixty-one dollars and fifty-four cents per annum; and that the residue of the said premises, being about twenty-four acres of land, are under lease from the said trustees by your petitioner as their attorney, to the president and directors of the Manhattan Company, for securing to them the payment of the sum of four thousand four hundred dollars borrowed of them by your petitioner, with interest for the same, part of which said last mentioned leasehold premises are underlet by the said lessees thereof, at the yearly rent of two hundred dollars, or thereabouts.

And your petitioner further showeth, that the said lot fronting on Broadway, in the fifth ward of the city of New York, is under lease to George Sinclair for the term of twenty-one years from the first day of May, in the year one thousand eight hundred and thirteen, at the yearly rent of four hundred and fifty dollars per annum.

And your petitioner further showeth, that some time in the year one thousand eight hundred and fourteen, the said devised premises not yielding a sufficient revenue or income to support your petitioner and family, and in its then situation, and the condition in which it was placed by the said will of the said testatrix, not admitting of being so improved as to yield an adequate income for that purpose, and the said Benjamin Moore, and Charity, his wife, and Elizabeth Maunsell, the said trustees in the said will named, all being aged or infirm, and wishing to be discharged from the said trust, and as well they, the said trustees, in and by an instrument of writing under their hands and seals, bearing date and executed by them on or about the 11th day of January, in the said last mentioned year, as also the said above named Clement C. Moore, by an instrument in writing under his hand and seal bearing date on or about the same last mentioned day and year, consenting and agreeing to all such acts as the legislature of this State should deem meet and proper to make for the benefit and relief of your petitioner or of his issue, heirs, and assigns, in and concerning the premises; and they, the said Benjamin Moore, and Charity, his wife, and Elizabeth Maunsell, by the said instrument in writing, under their hands and seals, also consenting and desiring that some other person or persons might be substituted for them, in their place and stead as trustee as aforesaid, and they be discharged from the said trust, your petitioner made application to the legislature of this State for aid and relief in and concerning the premises, and an act was thereupon passed, by the said legislature, on the first day of April, in the same last mentioned year, entitled "An act for the relief of Thomas B. Clarke," and in and by which said act it was, among other things contained therein, enacted, in substance, and to the effect, as follows—that is to say, that it should and might be lawful for the court of chancery, on the application of your petitioner, to constitute and appoint one or more trustees, to execute and perform the several trusts and duties specified and set forth in the said last will and testament of the said before named testatrix, in the place and stead of the said Banjamin Moore, and Charity, his wife, and Elizabeth Maunsell, who were thereby discharged from the trusts in the said will mentioned; and further, that the trustees to be appointed under the authority of that act, or the major part of them, should, as soon as conveniently might be, partition and divide the said tract of land and premises, situate at Greenwich aforesaid, and in and by the will aforesaid devised by the said testatrix to your petitioner as aforesaid, into two equal parts, one moiety whereof should be held by them to the use and upon the trusts declared in and by the said will, and the remaining moiety should be subdivided by the said trustees, or the major part of them, into so many lots as they, or the major part of them, might think thereto most likely to effect an advantageous sale thereof; and after having completed such subdivision, the said trustees, or the major part of them, were, by the said act, authorized and required, within a convenient time thereafter, not to exceed six months, except at the request of your petitioner, to sell and dispose of the said subdivided moiety, and also the said house and lot fronting on Broadway, in the fifth ward of the city of New York, in such manner and upon such terms as they, or the major part of them, might deem best for the interest of the several parties interested therein, and thereupon to make and execute good and sufficient deeds or conveyances in the law, to the purchaser or purchasers thereof; which deeds or conveyances should operate to convey to the said purchaser or purchasers respectively, all the estate, right, title, and interest which the said Mary Clarke, the said testatrix, had, at the time of her death, in and to the said premises; and further, that the said trustees, or a major part of them, within a convenient time after the said sale, for the purpose of securing the principal of the proceeds thereof to the uses and according to the trusts declared in and by the said will, and for the further purpose of creating an income for the benefit and support of your petitioner, his family and children, should invest the said proceeds in any public stock of the United States, or of this State, or bank stock, or should put the same out at interest on real security from time to time as they, or a major part of them, should deem most for the interest of the parties concerned therein; and that the said trustees, or a major part of them, should, out of the interest and income of the said proceeds, in the first place, set apart and reserve for the first four years eight hundred dollars a year, and from and after the expiration of the said four years, one thousand dollars a year during the natural life of your petitioner, the said annual reservation, together with the interest thereof from time to time accruing, to be invested in stock, or put out on real security by the said trustees, or a majority of them, for the purpose of creating an accumulating fund at a compound interest during the life of your petitioner, for the benefit of his children after his decease, to be then disposed of by the said trustees, or a majority of them, to the uses and according to the trusts declared in and by the last will and testament aforesaid; and that the residue of the said income that might remain from year to year, after making the reservations aforesaid, should be paid by the said trustees, or a major part of them, to your petitioner for his use and benefit, and for the maintenance of his family, and the education and support of his children. And in and by which said act of the legislature aforesaid, it was further enacted, in substance, that the said principal sum of money arising from the said sales, and that by that act directed to be vested and put out at interest as aforesaid, should be held by the said trustees, or the major part of them, according to the will aforesaid—that is to say, in trust to be assigned and paid over to the lawful issue of your petitioner living, at his death; and if your petitioner should not have any lawful issue at the time of his death, then to be assigned or paid over to the aforesaid Clement C. Moore or his representatives, or to such person as the said Clement C. Moore might by will appoint, in case of his death prior to that of your petitioner, as by the said act of the legislature in that behalf, reference being had thereto, may fully appear, and to which act your petitioner, for greater certainty, begs leave to refer himself. And your petitioner further showeth, that the said Clement C. Moore, in the act aforesaid named, having, after the passing of the said act, by any indenture duly executed by him, and recorded in the office of the secretary of this State, bearing date on or about the twenty-first day of February, in the year one thousand eight hundred and fifteen, for the consideration therein expressed, and in due form of law released and conveyed unto your petitioner, his heirs and assigns forever, all the estate, right, title, interest, property, claim, and demand whatsoever of him, the said Clement C. Moore, of, in, and to the real estate mentioned in the said act, whereby the said real estate became exclusively vested in your petitioner and his children; a certain other act of the legislature of the State of New York was, on or about the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and fifteen, passed on the application of your petitioner, for the further aid and relief of your petitioner in the premises, entitled "An act supplemental to the act for the relief of Thomas B. Clarke," passed April first, one thousand eight hundred and fourteen, in and by which the said last mentioned supplemental act, it was, amongst other things contained therein, enacted, in substance, as follows—that is to say, that all the beneficial interest and estate of the said Clement C. Moore, or those under him, arising, or to arise by virtue of the acts to which that supplementary act is a supplement, or by the will mentioned in the said first or original act, should be, and the same was, by the said supplemental act, vested in your petitioner, his heirs and assigns; and so much of the said original act to which the said supplemental act was a supplement, as was repugnant thereto, and so much of the said original act as required the trustees to set apart and reserve a certain annual stipend, out of the interest or income of the property thereby directed to be sold, for the purpose of creating and accumulating from it compound interest, during the life of your petitioner; and so much of the said act as required the several duties therein enumerated to be performed by trustees, to be appointed by the court of chancery, as therein mentioned, should be, and the same was, by the said supplemental act, repealed; and further, that your petitioner should be, and he was, and he is, by the said supplemental act, authorized and empowered to execute and perform every act, matter and thing in relation to the real estate mentioned in the act, to which that supplemental act was a supplement, in like manner, and with like effect that trustees duly appointed under the said act might have done, and that your petitioner apply the whole of the interest and income of the said property to the maintenance and support of his family, and the education of his children; and in and by which said supplemental act it is further enacted, that no sale of any part of the said estate shall be made by your petitioner, until he, your petitioner, shall have procured the assent of the chancellor of this State to such sale, who shall, at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he shall think proper, shall be vested in your petitioner, as by the said last mentioned and supplemental act, reference being had to the same, may, among other things contained therein, fully and at large appear, and to which, for greater certainty, your petitioner begs leave to refer himself.

And your petitioner further showeth, that he has a large and expensive family, consisting, besides himself, of a wife and six children, the eldest of whom is of the age of between eleven and twelve years, and the youngest an infant under the age of one year. And your petitioner further showeth, that the rents, profits, and income of the said real estate and premises so devised to him by the said Mary Clarke, the aforesaid testatrix, in manner aforesaid, and in the said acts of the legislature mentioned as aforesaid, are the sole and only resource and dependence of your petitioner for the maintenance and support of himself and his family, and the education of his children, several of whom are of ages that require an annual expenditure to a considerable amount therein. And your petitioner further showeth, that the said rents, profits, and income of the said estates are wholly inadequate and greatly deficient to and for the said purposes, and that the same have been inadequate thereto ever since the marriage and settlement in life of your petitioner and his wife. And your petitioner further showeth, that he has no profession or calling whereby he could add, by his earnings therein, to his income or resources; and that, to supply the said deficiency, which has been continually increasing, and to provide and procure the necessary funds and means for the support and maintenance of himself and his family, he, your petitioner, has been reduced to the necessity of incurring debts, and having recourse to loans; and that, for those purposes, and the discharge of other demands against him, he borrowed of the president and directors of the Manhattan Company aforesaid, the aforesaid sum of four thousand four hundred dollars, in the year of our Lord one thousand eight hundred and five, the chief part of which was required for and applied to the exigencies of his family; and that he has subsequently contracted debts by the purchase on credit of articles of indispensable necessity for himself and family, and by borrowing money of individuals, to be applied, and which has been applied, to the same purposes, to the amount of four thousand five hundred dollars and upwards, and that he is now indebted in the premises for principal and interest in the sum of and upwards. And your petitioner further showeth, that his own necessities and the interests and welfare of his wife and children require that sale should be made of what was authorized and directed by the herein first above mentioned act to be sold, of the said real estates and devised premises in the said act mentioned, and that so much of the net proceeds to arise and be received by and from such said sale thereof as may be necessary for the purpose, should be appropriated and applied in and for the payment and discharge of the said debts so contracted and incurred by your petitioner, for the purposes aforesaid, and the residue of the said net proceeds be vested in your petitioner as trustee under the supplemental act aforesaid, upon the trusts and for the purposes in and by the said act in this behalf expressed and declared, in the mode wherein your honor shall see fit, and be pleased to direct the same to be so vested in him, your petitioner. And your petitioner further showeth, that he understands and believes that the lessees and occupants of the eastern moiety or half part of the said premises at Greenwich, in the ninth ward of the city of New York, to be divided by a line drawn from the land of C. Ray to the southern boundary of the said premises, except a small part thereof, will consent that the said leasehold premises should be sold free, and discharged from their said leases thereon, and unencumbered thereby. Wherefore your petitioner respectfully prays that your honor will be pleased to authorize, assent to, and direct the sale of said eastern moiety or half part of the said premises at Greenwich, aforesaid, to be divided in manner aforesaid, or the one moiety or half part of the said premises, according to some other division and partition thereof, to be designated and directed by your honor, as also the said house and lot of ground and premises fronting on Broadway aforesaid, in the fifth ward of the city of New York aforesaid, by your petitioner, for the objects and purposes hereinbefore mentioned, and by the act aforesaid authorized and contemplated; and that your honor will be pleased to give such directions for, and touching the said sales thereof, as may appear to your honor to be meet and proper; and that your honor will be pleased to authorize, order and direct, at the same time, that so much of the net proceeds of such sales as may be necessary for the purpose be appropriated and applied in and for the payment and discharge of the said debts so contracted and incurred by your petitioner as aforesaid, for the purposes aforesaid, and that the residue of the said net proceeds of the said sales be vested in the name of your petitioner as trustee as aforesaid, in and upon some good productive stocks or funds of a permanent nature, or at interest upon real security, or otherwise as your honor may see fit to order and direct, and your petitioner will ever pray, &c.

T. B. CLARKE.

STATE OF NEW YORK, *ss.*

Thomas B. Clarke, the petitioner in the foregoing petition named, being duly sworn, deposeth and saith, the facts set forth and contained in the said foregoing petition which rest in his knowledge are true, and that those which he derives from the information of others he believes it to be true.

T. B. CLARKE.

Sworn 28th day of June, 1815, before—
THEOD. V. W. VARICK,
Mast. in Chancery.

28th June, 1815.

(A copy.)

HIRAM WALWORTH,
Assistant Register.

Order of Reference.

At a court of chancery held for the State of New York, at the City Hall of the city of New York, on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifteen: present, the Honorable James Kent, esq., chancellor.

In the matter of the petition of Thomas B. Clarke, under the acts of the legislature herein mentioned.

On reading the petition in this matter, praying for the assent of the chancellor to the sale of the premises in the said petition mentioned, and in and by the acts of the legislature of the State, passed on the first day of April, in the year of our Lord one thousand eight hundred and fourteen, entitled "An act for the relief of Thomas B. Clarke, and the act supplementary thereto, in the said petition mentioned, for the objects and purposes in the said last mentioned act and the petition mentioned, and for the direction of the chancellor, for the application of so much of the proceeds of the said sales as may be necessary to and for the payment of the debts of the petitioner in the said petition mentioned, and of the mode in which the residue of the said proceeds shall be vested in the petitioner as trustee, made in pursuance of the supplemental act aforesaid, and the affidavit of the petitioner, of the truth of the facts set forth in his said petition, which petition and affidavit being filed, on motion of Mr. S. Jones, jr., of counsel for the petitioner, it is ordered that it may be referred to one of the masters of this court to examine into the allegations and matters in the said petition set forth and contained, and to report thereon to this court with all convenient speed, and that all directions be reserved until the coming in of the said report."

Master's Report, dated 30*th day of June*, 1815.

In Chancery. In the matter of the petition of Thomas B. Clarke, under the acts of the legislature, in the said petition mentioned.

STATE OF NEW YORK, *ss*.

In pursuance of an order of this honorable court made in the above matter, and bearing date on the twenty-eighth day of June, one thousand eight hundred and fifteen, by which it is referred to one of the masters of this court to examine into the allegations and matters in the said petition of the said Thomas B. Clarke set forth and contained, and report thereon with all convenient speed: Now, therefore, I, the subscriber, one of the masters of this court, do respectfully report that I have examined the act entitled "An act for the relief of Thomas B. Clarke," passed April 1st, 1814, and the act passed on the 24th day of March, 1815, entitled "An act supplemental to the act for the relief of Thomas B. Clarke," passed April 1st, 1814, in the said petition, in part recited and referred to, and find that the matters and things therein contained, and the authority and estate thereby vested, are the same in substance and purport as in or by the said is set forth and recited. And I do further report, that four acres and three-fourths of an acre, parcel of the premises situate at Greenwich, in the said petition mentioned, were leased to Robert Lenox, in the said petition named, from the first day of May, one thousand eight hundred, for and during the term of eighteen years, for the yearly rent of one hundred and eighteen dollars and seventy-five cents, making twenty-five dollars per acre per annum, of which term nearly three years are unexpired, as in said petition is stated; that three roods and thirty-five perches, other parcels of the said premises, were leased to the said Robert Lenox by the said petitioner, as attorney to the trustees of the said premises named in the will of Mary Clarke, in the said petition and said first mentioned act named, as in and by the said petition is stated, from the first day of August, one thousand eight hundred and four, for and during the term of twenty-one years, at the yearly rent of forty-three dollars and seventy cents, being at the rate of forty-five dollars per acre per annum, of which term upwards of ten years are unexpired, as in the said petition is stated; that ten acres, one rood and one perch, other parcel of the said premises, were leased by the said petitioner, as attorney as aforesaid, to Michael Hogan, from the first day of August, one thousand eight hundred and four, for and during the term of twenty-one years, at the yearly rent of four hundred and sixty-one dollars and fifty-four cents, of which said term upwards of ten years are still unexpired, as in said petition is stated; all which satisfactorily appears from an examination by me made of the respective leases for the several above mentioned parcels of the aforesaid premises at Greenwich. And I do further report, that the residue of the said premises at Greenwich, constituting nearly the eastern moiety thereof, to be divided by the line in that behalf mentioned in the said petition, and comprising about twenty-four acres of land, were leased by the said petitioner, as attorney as aforesaid, to the Manhattan Company in the city of New York, from the fifteenth day of July, one thousand eight hundred and five, for and during the term of twenty-one years, of which said term eleven years or thereabouts are still unexpired, for the purpose of securing to the said company the payment of the sum of four thousand four hundred dollars, borrowed of them by the said petitioner, with interest, as appears from the examination of the said lease made by me, part of which said leasehold premises are underlet by the said lessees thereof at the yearly rent of two hundred dollars, as appears from the examination of Henry Remsen, the president of the said company, and which said debt still remains due and unpaid, as also appears by the said examination by me taken in the premises. And I do further report, that the lot on Broadway, in the fifth ward of the city of New York, mentioned in the said petition, were leased by the said petitioner, as attorney as aforesaid, to George Sinclair, in the said petition named, for and during the term of twenty-one years, from the first day of May, one thousand eight hundred and thirteen, at the yearly rent of four hundred and fifty dollars, as in said petition is stated, of which said term nearly nineteen years are unexpired, as appears by an examination of the said lease. And I do further report, that Henry Remsen, president of the Manhattan Company above mentioned, to which the said company nearly the whole of the eastern moiety of the said premises at Greenwich was leased as aforesaid, upon his examination before me, stated that the said company, of which he is president, are willing and will consent, as in the said petition is set forth, that the said leasehold premises should be sold free and discharged from the said lease thereon, and unincumbered thereby, so, however, that and upon condition that the aforementioned debt of the petitioner to the said company, with the interest due thereon, be first paid and satisfactorily secured to be paid to the said company by and out of the proceeds of such sale, and that the proper directions be given for that purpose in the order to be made by the court in the premises. And I do further report, that the said petitioner is indebted to divers persons in large and considerable amounts; that I have examined his several creditors as to their respective debts, and as far as proof was attainable from his said creditors, it appears that the sums by him borrowed, and the debts by him contracted, with the exception of what constitutes part of the said debt due to the Manhattan Company aforesaid, were appropriated to and incurred for the maintenance of his family, as in said petition is set forth; and when such proof was not to be procured, I have taken the deposition of the said petitioner as to the application of the moneys so borrowed, from which it appears that all such moneys, except as aforesaid, were applied as above stated. And I do further report, that I find the said petitioner indebted unto Henry Simmons on bonds and notes in the sum of one thousand three hundred dollars and upwards; unto James Davidson on bond in the sum of one thousand dollars and upwards; unto James Oakley on book account in the sum of one hundred and seventy dollars and upwards; unto Robert Stuart on book account in the sum of one hundred and thirty-five dollars or thereabouts; unto John Wallis for money lent and costs of suit at sundry times in the sum of five hundred and twenty dollars and upwards; unto George Sinclair on note in the sum of one hundred and seventy dollars and upwards; unto Tenbroeck on note in the sum of one hundred and seventy dollars and upwards; unto Frederick Garner in the sum of five hundred and twenty dollars and upwards on bond and book account; unto the Manhattan Bank on note of the sum of three hundred dollars and upwards; unto Richard Despard in the sum of three hundred and sixty dollars and upwards; unto Samuel W. Moore in the sum of seventy dollars on book account; and divers other persons, as appears from the affidavit of the said petitioner, no other proof being produced thereof, in the sum of seven hundred dollars and upwards, and all which several sums in the whole amount to five thousand four hundred dollars and upwards. And I do further report, that it appears from the deposition of Samuel W. Moore, that the said petitioner was married in the year one thousand eight hundred and two; that he has a large and increasing family, consisting of a wife and six children, the eldest of whom is between eleven and twelve years of age, and the youngest an infant under the age of one year; that the said petitioner is engaged in no profession or occupation; and that he is greatly embarrassed by the debts aforesaid, and the heavy expenses incurred for the maintenance of his family and the education of his children. And I do further report, that it satisfactorily appears to me, that the rents and profits of the said house and lot fronting on Broadway aforesaid, and the said premises at Greenwich aforesaid, are not, and from the local situation and state of improvement thereof, and of the said premises at Greenwich, even if unincumbered by the present leases thereof, could not be made adequate or sufficient for the support of the said petitioner and his family, and the education of his children, even if the whole thereof could be applied thereto; and that the same, after paying thereout the interest of the aforesaid debts of the petitioner, would be insufficient for the reasonable and proper support of the petitioner and his family according to their situation in life, and would admit of no provision or allowance for the education of the children of the petitioner.

All which is respectfully submitted.

THEOD. V. W. VARICK,
Master in Chancery.

(Filed July 3d, 1815.)

Order of the Chancellor.—July 3*d*, 1815.

At a court of chancery, held for the State of New York, at the city of New York, on the third day of July, in the year one thousand eight hundred and fifteen; present, the Honorable James M. Kent, esq., chancellor. In the matter of the petition of Thomas B. Clarke, under the acts of the legislature therein mentioned.

The petitioner having presented his petition to the chancellor, in substance setting forth, among other things, the devise of a certain house and lot of land in the fifth ward of the city of New York, and certain land and premises in the ninth ward of the said city, in the said petition more particularly mentioned, by Mary Clarke, therein mentioned, by her last will and testament, to certain trustees therein named, upon trust to receive the rents and profits thereof, and pay the same to the petitioner, during his natural life, and from and after his decease to convey the said premises to his lawful issue living at his death, in fee; and if he, the petitioner, should not leave any lawful issue at the time of his death, then to convey the same to Clement C. Moore, in the said will named, and his heirs, or to such person in fee as he might by will appoint, in case of his death prior to that of the petitioner; the release and conveyance by the said Clement C. Moore, of all his estate, right, and interest, claim and demand, in and to the said devised premises to the petitioner, and the parts and provisions of, and in the act entitled "An act for the relief of Thomas B. Clarke," and an act supplementary thereto in the said petition, in substance recited, by the first of which acts, viz., the act entitled "An act for the relief of Thomas B. Clarke," passed on the application of the petitioner, and with the consent of the trustees in the will aforesaid named, and of the said Clement C. Moore, before the said release and conveyance by the said Clement C. Moore, of his estate and interest in the said devised premises to the petitioner, the said trustees in the will aforesaid named were with their assent discharged from the said trust, and an authority given to this court to constitute and appoint one or more trustees in their place and stead, on the application of the petitioner, to execute and perform the several trusts and duties in the said will and in that act expressed and contained, and in and by which said act the trustees to be appointed under the authority thereof, or a major part of them, were directed to divide the said premises at Greenwich, in the ninth ward of the city of New York, into two equal parts, one moiety thereof to remain in trust, and the remaining moiety to be subdivided into suitable lots for the advantageous sale thereof, and the same when so subdivided, and also the said house and lot in the fifth ward of the city of New York, to be sold and disposed of, and conveyances executed and given for the same, for the purchasers thereof, and the net proceeds thence arising to be put out and invested as authorized by the said act, and a given part of the interest and income of the said proceeds to be annually in the first place set apart, reserved and invested, during the natural life of the petitioner, to create an accumulating fund for the benefit of those in remainder, being the lawful issue of the petitioner, living at the time of his death, or in default of such issue to the said Clement C. Moore, and the residue of the said interest for his use and benefit, and the support of his family, and education of his children, and the principal of the said proceeds to be held and disposed of by the trustees according to the trusts of the will aforesaid, in that behalf, and in and by which said supplemental act, passed subsequently to the release and conveyance of the said Clement C. Moore, of his estate and interest in and to the said premises to the petitioner, all the beneficial interest and estate of the said Clement C. Moore, and those under him, arising or to arise by the said first mentioned act or the said will mentioned therein, so as vested in the petitioner, his heirs and assigns, and by which said supplemental act, the parts and provisions therein specified of the first mentioned act were repealed, and he, the petitioner, was authorized and empowered to execute and perform every act, matter and thing, in relation to the real estate mentioned in the said original or first mentioned act, in like manner and with like effect that the trustees duly appointed under the said act might have done, and to apply the whole of the interest and income of the said property to the maintenance of his family, and the education of his children; but it was further provided and enacted, that no sale of any part of the said estate should be made by the petitioner, until he should have procured the assent of the chancellor of this State to such sale, who should at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he should think proper, should be vested in the petitioner as trustee; and the said petitioner further setting forth in and by his said petition, that he has a large and expensive family, consisting besides himself of a wife and six children, the oldest between eleven and twelve years of age, and the youngest under one year; that the rents and profits and income of the said trust premises are the sole resource and dependence of him, the petitioner, for the maintenance and support of himself and his family, and the education of his children, several of whom are of ages that require a considerable annual expenditure therein; that the said trust premises are under the leases, on the several parts and parcels thereof, in the said petition mentioned, and that the rents, profits, and income thereof are inadequate to purpose aforesaid, and have been inadequate thereto ever since the marriage and settlement in life of him, the petitioner, and that to supply the deficiency, which has been continually increasing, and provide and procure the necessary means and funds for the support of himself and his family, he has been reduced to the necessity of contracting and incurring debts; and that for those purposes, and the discharge of other demands against him, he borrowed of the president and directors of the Manhattan Company the sum of four thousand and four hundred dollars, in the year one thousand eight hundred and five, and has subsequently contracted other debts, by purchases on credit of articles of indispensable necessity, for himself and his family, and by borrowing moneys to be applied, and which he has applied to the same purpose, and that his own necessities, and the interest and welfare of his family, require that sale should be made of what was authorized and directed by the herein first mentioned act to be sold of the said trust premises, and so much of the proceeds as might be necessary applied to the payment of the said debts of the petitioner, and the residue vested in him as trustee, under the supplemental act aforesaid, for the purposes therein mentioned; and that he, the petitioner, expected to be able to obtain the consent of the lessees of nearly the whole of the eastern moiety of the said premises at Greenwich, to be divided by the line in the said petition mentioned and described, to the sale thereof, free and discharged from the lease thereof, and praying the chancellor to give his assent to, and authorize the sale by the petitioner of the said eastern moiety of the said premises at Greenwich, or such other moiety thereof as the chancellor might be pleased to designate and direct, and also of the said house and lot in the said fifth ward of the city of New York, for the objects and purposes in the said petition mentioned, and by the acts aforesaid authorized and contemplated, and to give such directions for and touching the said sale as he might deem meet and proper; and further praying the chancellor to authorize, order and direct, that so much of the net proceeds of such sales as might be necessary for the purpose, should be appropriated and applied to the payment and discharge of the said debts so contracted and incurred by him, the petitioner, for the purposes aforesaid, and the residue thereof vested in the name of him, the petitioner, as trustee as aforesaid, in such mode as the chancellor should direct, in and upon some good productive stocks or funds of a permanent nature, or on interest upon real security, or otherwise as might be directed by the chancellor; and it having been referred by this court, by an order made in this matter on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifteen, to one of the masters of this court, to examine into the allegations and matters in the said petition set forth and contained, and to report thereon, and Theodorus V. W. Varick, esquire, one of the masters of this court, having, in pursuance of the said order of reference, made a report in the premises to this court, whereby it appears that he, the said master, has examined into the matters and allegations set forth in the said petition, as he was directed by the said order to do, and found the same to be true, and that the petitioner is indebted over and above the said debt of four thousand four hundred dollars to the Manhattan Company aforesaid, to the amount of five thousand four hundred dollars and upwards, and that he is not engaged in any profession or occupation, and is greatly embarrassed by his said debts; and further that the said trust premises, and under the several leases thereof, in the said report particularly specified, and that it satisfactorily appeared to him, the said master, that the rents and profits of the said trust estate are not, and from the local situation and state of improvement thereof, and of the said premises at Greenwich in particular, even if unincumbered by the present leases thereof, would not be made adequate or sufficient for the support of the petitioner and his family, and the education of his children, even if the whole of said rents and profits could be applied thereto; and that the same, after paying thereout the interest of the said debts of the petitioner, would be insufficient for the reasonable and proper support of the petitioner and his family, according to their situation in life, and would admit of no provision or allowance for the education of the children of him, the petitioner; and it further appearing by the said report, that nearly the whole of the said eastern moiety of the said premises at Greenwich, in the ninth ward of the city of New York, to be divided by the line in that behalf mentioned in the said petition, is included in a lease by way of mortgage executed by the petitioner, as attorney for the trustees, in the will aforesaid named, of and upon the premises described, to the president and directors of the Manhattan Company aforesaid, for the term of twenty-one years from the fifteenth day of July, one thousand eight hundred and five, for the purpose of securing to the said company the payment of the aforesaid debt or sum of four thousand four hundred dollars, borrowed of them by the petitioner aforesaid, with interest for the same, and that the said president and directors of the said company are willing, and will consent, that the said leasehold premises be sold, freed and discharged from their said lease thereof, and unincumbered thereby, on condition that said debt of the petitioner to the said company, with the interest thereof, be first paid, or satisfactorily secured, to the said company, by and out of the said proceeds of such sale, and that the proper directions be given for that purpose, in the order to be made by the court in the premises, which report is filed; therefore, on motion of Mr. S. Jones, junior, of counsel for the petitioner, it is ordered that the assent of the chancellor be and hereby is given to the sale, by the petitioner, of the said house and lot in the fifth ward of the city of New York, and of the eastern moiety or half part of the said premises at Greenwich, in the ninth ward of the city of New York, to be divided by the line in the manner for that purpose mentioned in the said petition; and the petitioner is authorized and directed to sell and dispose of the same, under and according to the aforesaid acts of the legislature in that behalf, the said sales to be made under the direction of one of the masters of this court, and the petitioner to proceed in making the sales and conveyances of the said premises so to be sold, in the manner for that purpose in and by the said acts prescribed and directed. And it is further ordered, that the purchase moneys for the said premises so to be sold be paid by the purchasers to the said master, to be disposed of by him as hereinafter directed. And it is further ordered and directed, and his honor, the chancellor, hereby doth authorize, order, and direct, that so much of the net proceeds to arise from such sales as may be necessary for the purpose be applied, under the direction of one of the masters of this court, in and for the payment and discharge of the debts now owing by the petitioner, and to be contracted for the necessary purposes of his family, to be proved before the said master, and the costs, charges, and expenses of the petitioner, on his petition in this matter, and the proceedings had and to be hereafter had, under or in consequence thereof; but so, however, and it is further ordered and directed, that the net proceeds of the said eastern moiety of the said premises at Greenwich aforesaid, or so much thereof as shall be necessary for that purpose, be applied in the first place, and before and in preference to any other appropriation or application thereof, to pay and satisfy to the president and directors of the Manhattan Company aforesaid the aforesaid debt or sum of four thousand four hundred dollars, with the interest thereof, up to the time of such payment, or such part and balance of the said debt and interest as shall not have been otherwise paid or satisfied. And it is further ordered and directed, and his honor, the chancellor, hereby doth further order and direct, that the residue of the said net moneys and proceeds arising from such said sales, after the said debts, costs, charges, and expenses shall be discharged and paid by and out of the same, be placed out at interest on real security in the city of New York, in the name of the petitioner as trustee, under the direction of one of the masters of this court, under the following trusts, to be expressed upon the face and in the body of the said securites respectively, whereon the same shall be so placed—that is to say, upon trust, that the interest and income thereof, or so much of the same as may be required for that purpose, be applied from time to time in and for the suitable and proper maintenance and support of the petitioner, and his wife and children already born or to be hereafter born, according to their situation in life, and for the suitable education of the said children; and upon further trust, that the said principal sum or sums, with the securities whereon the same may be vested or placed, and may stand, shall be held, and he, the petitioner, as trustee, stand and be possessed thereof, in trust for the benefit of the lawful issue of the petitioner, who shall be living at the death of him, the petitioner, according to the trust upon which the unsold moiety of the said premises at Greenwich aforesaid, in the aforesaid acts of the legislature mentioned, are or shall be held, and so and in such manner that the said interest and income of the said trust moneys, funds, and securities, or so much thereof as may be requisite thereto, shall be appropriated, applied and secured in the first instance, and exclusively, to the suitable maintenance of the family of the petitioner according to their situation in life, and the suitable education of his children, and shall not be subject or liable to or for the engagements, debts, or control of the petitioner, or for any other purpose whatsoever than the said purposes hereby designated and authorized; provided that any surplus of the said interest and income, that may be left and remain after the said objects and purposes hereby designated as aforesaid, first fully and liberally fulfilled and accomplished according to the true meaning hereof, shall be for the use and at the disposal of him, the petitioner. And it is further ordered, that the master, under whose direction the said sales should be made, and the debts paid, and surplus proceeds placed out as aforesaid, report to this court the proceedings that may be had in the premises, and the securities that may be taken therein, pursuant to this order, with all convenient speed, and that all and every person or persons who are, or is, or may become interested therein, have liberty to apply to this court, at any time or times hereafter, for any further or other orders or directions, in or touching the premises.

Petition of Thomas B. Clarke.—March 12, 1816.

To the honorable the Legislature of the State of New York:

The memorial and petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That his honor, the chancellor, under the act "for the relief of Thomas B. Clarke," passed April 1, 1814, and the act "supplemental to the act for the relief of Thomas B. Clarke," passed March 24, 1815, did order and direct that the said Thomas B. Clarke should sell the eastern moiety or half part of the premises in the said act and order mentioned.

And your petitioner further shows that, owing to the scarcity of money and the present low price of property, no sale can be made without a great sacrifice.

Your petitioner therefore prays that he may be allowed to mortgage such part of the property in the said act mentioned as the chancellor may appoint, and for the purposes mentioned in the said acts and order, and that your petitioner be allowed to bring in a bill for that purpose. And he will ever pray, &c.*

ASSEMBLY CHAMBER,
Clerk's Office, Albany, Dec. 5, 1844.

I hereby certify that the foregoing is a true copy of an original petition presented to the assembly of the State of New York, and referred to Messrs. Lynch, Laight, and Joseph Smith; that said petition had no signature, and that the same is on file among the legislative papers belonging to said assembly remaining in this office.

I further certify that I have made diligent search among the legislative papers belonging to said assembly for the years 1814, 1815, and 1816, and I cannot find among said papers any other petition or paper relating to any application or petition of Thomas B. Clarke; nor do I find any evidence among said papers, or remaining in this office, that any testimony was taken or produced before the said assembly touching any application or petition of Thomas B. Clarke, except what appears in certain statutes relating thereto, printed in the Session Laws of this State.

JAS. R. ROSE,
Clerk of the Assembly of the State of New York.

Extract from Assembly Journal.

March 12, 1816.

Mr. Lynch, from the select committee to whom was referred the petition of Thomas B. Clarke, reported: That the petitioner was authorized by a law of the last session to sell certain real estate, under the direction of the chancellor; that from the scarcity of money, he finds a difficulty in making a sale of said property, without a sacrifice, and now prays to be permitted to mortgage said estate, subject to the same restrictions, and under the direction of the court of chancery, in like manner as is contained in said act. The committee are of opinion that the prayer of the said petitioner is reasonable, and ought to be granted. They have prepared a bill for that purpose, and directed their chairman to ask for leave to bring in the same.

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* Not signed.

Act of March 29th, 1816.

An act further supplemental to an act entitled "An act for the relief of Thomas B. Clarke."

Be it enacted by the people of the State of New York, represented in senate and assembly, That the said Thomas B. Clarke be, and he is hereby, authorized, under the order heretofore granted by the chancellor, or under any subsequent order, either to mortgage or to sell the premises which the chancellor has permitted or hereafter may permit him to sell, as trustee under the will of Mary Clarke, and to apply the money so raised by mortgage or sale to the purposes required or to be required by the chancellor under the acts heretofore passed *or* the relief of the said Thomas B. Clarke.

Petition to the Chancellor.

November 1st, as of May 30th, 1816.

To the Honorable James Kent, Chancellor of the State of New York:

The petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That your petitioner, some time on or about the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifteen, presented his petition to your honor, in substance setting forth, among other things, the devise of a certain house and lot of land in the fifth ward of the city of New York, and certain land and premises in the ninth ward of the said city, in the said petition more particularly mentioned, by Mary Clarke, therein mentioned, by her last will and testament, to certain trustees therein named, upon trust to receive the rents and profits thereof, and pay the same to your petitioner during his natural life, and from and after his decease to convey the said premises to his lawful issue living at his death, in fee; and if your said petitioner should not have any lawful issue at the time of his death, then to convey the same to Clement C. Moore, in the said will named, and his heirs, or to such person in fee as he might by will appoint in case of his death prior to that of your petitioner; and further setting forth, in substance, the release and conveyance of the said Clement C. Moore of all his estate, right and interest, claim and demand, in and to the said demised premises, to your petitioner, and the parts and provisions of and in the act entitled "An act for the relief of Thomas B. Clarke," and an act supplementary thereto, in the said petition in substance recited, by the first of which acts, namely, the act entitled "An act for the relief of Thomas B. Clarke," passed on the application of your petitioner, and with the consent of the trustees in the will aforesaid named, and of the said Clement C. Moore, before the said release and conveyance by the said Clement C. Moore of his estate and interest in the said devised premises to your petitioner, the said trustees in the will aforesaid named were, with their assent, discharged from the said trust, and an authority given to the chancellor to constitute and appoint one or more trustees in their place and stead, on the application of your petitioner, to execute and perform the several trusts and duties in the said will and in that act expressed and contained; and in and by which said act the trustees to be appointed under the authority thereof, or a major part of them, were directed to divide the said premises at Greenwich, in the ninth ward of the city of New York, into two equal parts, one moiety thereof to remain in trust, and the remaining moiety to be subdivided into suitable lots for the advantageous sale thereof; and the same when so divided, and also the said house and lot in the fifth ward of the city of New York, to be sold and disposed of, and conveyances executed and given for the same to the purchasers thereof, and the net proceeds thence arising to be put out and invested as authorized by the said act; and a given part of the interest and income of the said proceeds to be annually, in the first place set apart, reserved and invested during the natural life of your petitioner, to create an accumulating fund for the benefit of those in remainder, being the lawful issue of your petitioner, or living at the time of his death, or in default of such issue, the said Clement C. Moore and the residue of the said interest and income to be paid to your petitioner for his use and benefit and support of his family, and education of his children; and the principal of the said proceeds to be held and disposed of by the said trustees, according to the trusts of the will aforesaid, in that behalf, and in and by which said supplemental act passed subsequently to the release and conveyance by the said Clement C. Moore, of his estate and interest in and to the said premises to your petitioner, all the beneficial interest and estate of the said Clement C. Moore and those under him, arising or to arise by the said first mentioned act, or the said will mentioned therein, was vested in your petitioner, his heirs and assigns; and by which said supplemental act, the parts and provisions therein specified of the said first mentioned act were repealed, and your petitioner was authorized and empowered to execute and perform every act, matter and thing in relation to the real estate mentioned in the said original or first mentioned act in like manner and with the like effect that trustees duly appointed under the said act might have done, and to apply the whole of the interest and income of the said property to the maintenance of his family and the education of his children; but it was further provided and enacted, that no sale of any part of the said estate should be made by your petitioner until he should have procured the assent of the chancellor of this State to such sale, who should, at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he should think proper, should be vested in the petitioner as trustee; and your said petitioner further setting forth, in and by his said petition, in substance, among other things, that he had a large and expensive family; that the rents and profits and income of the said trust premises were the sole resource and dependence of your petitioner for the maintenance and support of himself and his family, and the education of his children, several of whom were of ages that required a considerable annual expenditure therein; that the said trust premises were under leases on the several parts and parcels thereof in the said petition mentioned, and that the rents, profits and income thereof were inadequate to the purposes aforesaid, and had been inadequate thereto ever since the marriage and settlement in life of your petitioner, and that to supply the deficiency which had been continually increasing, and provide and procure the necessary means and funds for the support of himself and his family, he had been reduced to the necessity of contracting and incurring debts; and that for those purposes and the discharge of other demands against him, he borrowed of the president and directors of the Manhattan Company the sum of four thousand four hundred dollars, in the year one thousand eight hundred and five, and had subsequently contracted other debts by purchases on credit of articles of indispensable necessity for himself and his family, and by borrowing moneys to be applied, and which he had applied, to the same purposes, and that his own necessities and the interest and welfare of his family required that sale should be made of what was authorized and directed by the said first mentioned act to be sold of the said trust premises, and so much of the proceeds as might be necessary applied to the payment of the said debts of your petitioner, and the residue vested in him, as trustee, under the supplemental act aforesaid, for the purposes therein mentioned, and that your petitioner expected to be able to obtain the consent of the lessees of nearly the whole of the eastern moiety of the said premises at Greenwich, to be divided by the line in the said petition mentioned and described, to the sale thereof free and discharged from the leases thereof; wherefore your petitioner, in and by his said petition, did pray your honor, the said chancellor of the State of New York, to give his assent to and authorize the sale by your petitioner of the said eastern moiety of the said premises at Greenwich, or such other moiety thereof as the chancellor might be pleased to designate and direct, and also of the said house and lot in the said fifth ward of the city of New York, for the objects and purposes in the said petition mentioned, and by the acts aforesaid authorized and contemplated, and to give such directions for and touching the said sale as he might deem meet and proper; and did further pray the said chancellor to authorize, order and direct, that so much of the net proceeds of such sales as might be necessary for the purpose should be appropriated and applied to the payment and discharge of the said debts so contracted and incurred by your petitioner, for the purposes aforesaid, and the residue thereof vested in the name of your petitioner, as trustee as aforesaid, in such mode as the chancellor should direct, in and upon some good and productive stocks or funds of a permanent nature, or on interest upon real security, or otherwise, as might be directed by the chancellor, as by the said petition now on file as of record in the proper office of the said court of chancery, for that purpose reference being had to the same, fully and at large may appear, and to which, for greater certainty in the premises, your petitioner prays leave to refer himself.

And your petitioner further showeth, that it having, on presenting the said petition, been referred by this court, by an order made in this matter on or about the aforesaid twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifteen, to one of the masters of this court to examine into the allegations and matters in the said petition set forth and contained, and to report thereon with all convenient speed, and Theodorus V. W. Varick, esquire, then and yet one of the masters of the said court of chancery, having taken upon him the charge of the said reference to the said master, did, in pursuance of the said order, proceed to take the examination which he was thereby directed to take in the premises, and afterwards made his report thereon, bearing date some time on or about the thirtieth day of June, in the said last mentioned year, whereby it was stated and did appear, that the said master had examined into the matters and allegations set forth in the said petition, as he was directed by the said order to do, and found the same to be true, and that your petitioner was indebted over and above the said debt of four thousand four hundred dollars to the Manhattan Company aforesaid, to the amount of five thousand four hundred dollars and upwards; and that he, your petitioner, was not engaged in any profession or occupation, and was greatly embarrassed by his said debts; and further, that the said trust premises were under the several leases thereof, in the said report particularly specified, and in and by which said report the said master did further report and state that it satisfactorily appeared to him, the said master, that the rents and profits of the said trust estate were not, and from the local situation and state of improvement thereof, and of the said premises at Greenwich in particular, even if unincumbered by the leases thereof, could not be made adequate or sufficient for the support of the petitioner and his family and the education of his children, even if the whole of the said rents and profits could be applied thereto; and that the same, after paying thereout the interest of the said debts of your petitioner, would be insufficient for the reasonable and proper support of your petitioner and his family, according to their situation in life, and would admit of no provision or allowance for the education of the children of your petitioner; and by which said report it further appeared and was stated, that the whole of the said eastern moiety of the said premises at Greenwich, in the ninth ward of the city of New York, to be divided by the line in that behalf mentioned in the said petition, was included in the lease by way of mortgage, executed by your petitioner as attorney for the trustees in the will aforesaid named, of and upon the premises therein described, to the president and directors of the Manhattan Company aforesaid, for the term of twenty-one years from the fifteenth day of July, eighteen hundred and five, for the purpose of securing to the said company the payment of the debt or sum of money aforesaid, borrowed of them by your petitioner as aforesaid, with interest for the same; and that the said president and directors of the said company were willing and would consent that the premises should be sold free and discharged from their said lease thereof, and unincumbered thereby, on condition that the debts of your petitioner to the company, with the interest thereof, should be first paid or satisfactorily secured to the said company, by and out of the said proceeds of such sale, and that the proper directions should be given for that purpose in the order to be made by the court in the premises as by the said report, which was filed, and now remains on file, as of record in the proper office of this honorable court in that behalf, reference being had thereto fully and at large, may appear, and to which your petitioner for greater certainty in the premises prays leave to refer himself.

And your petitioner further showeth, that upon the coming in of the said report, that is to say, at a court of chancery held for the State of New York, at the City Hall of the city of New York, on the third day of July, in the said year of our Lord one thousand eight hundred and fifteen, the said report being read and filed, it was, on the motion of the counsel for your petitioner, among other things, ordered that the assent of the chancellor be and thereby was given to the sale by your petitioner, of the said house and lot in the fifth ward of the city of New York, and of the eastern moiety or half part of the said premises at Greenwich, in the ninth ward of the city of New York, to be divided by the line and in the manner for that purpose mentioned in the said petition; and your petitioner was thereby authorized and directed to sell and dispose of the same under and according to the aforesaid acts of the legislature in that behalf; the said sales to be made under the direction of one of the masters of this court, and your petitioner to proceed in making the said sales and conveyances of the said premises to be sold, in the manner for that purpose in and by the said acts prescribed and directed; and it was further ordered, that the purchase moneys for the said premises so to be sold, be paid by the purchasers to the said master, to be disposed of by him as in the said last mentioned order after directed; and in and by the same last mentioned order, it was also further ordered and directed, and his honor, the chancellor, did thereby authorize, order and direct, that so much of the net proceeds to arise from such sales as might be necessary for the purpose, should be applied under the direction of one of the masters of this court, in and for the payment and discharge of the debts then owing by your petitioner, and to be contracted for the necessary purposes of his family, to be proved before the said master, and the costs, charges, and expenses of your petitioner on his aforesaid petition, in the matter aforesaid, and the proceedings had, and to be thereafter had, under or in consequence thereof; but so, however, and it was thereby further ordered and directed, that the net proceeds of the said eastern moiety of the said premises at Greenwich aforesaid, or so much thereof as should be necessary for that purpose, should be applied in the first place, and before and in preference to any other appropriation or application thereof, to pay and satisfy to the president and directors of the Manhattan Company aforesaid the aforesaid debt or sum of four thousand four hundred dollars, with the interest up to the time of such payment, and such part and balance of the said debt and interest as should not have been otherwise paid or satisfied, with further orders and directions in the same last mentioned order contained, as to the residue and surplusage of the debts, moneys, and proceeds arising from the said *states* after the said debts, costs, and charges, and expenses discharged and paid by and out of the same, and for placing out, ordering and disposing thereof, and of the interest and income thereof; and with a further order therein contained for the master, under whose directions the said sales should be made, and the debts paid and the surplus proceeds placed out as thereby directed, to report his proceedings in the premises; and that all and every person or persons who were, or was, or might become interested therein should have liberty to apply to this court at any time or times thereafter for any further or other orders or directions, in or touching the premises, as by the said last mentioned order in the minutes of the said court, in the proper office for that purpose remaining, or a certified copy thereof, in your petitioner's possession, reference being thereunto had, fully and at large may appear, and to which your petitioner, for greater certainty in the premises, begs leave to refer himself.

And your petitioner further showeth, that the said eastern moiety or half part of the said premises at Greenwich were subdivided into suitable lots for the advantageous sale thereof, which lots, being two hundred and forty full city lots, besides a number of gore lots, were offered for sale under the direction of the said

Theodore V. W. Varick, the aforesaid master of this court, at the Tontine coffee-house, in the city of New York, when a few of the said lots were sold, but that the lots which were so sold were struck off at such low prices that your petitioner deemed it expedient to stop the sale thereof, and the residue of the said lots, though tried at several different times, could not be sold unless at a sacrifice of nearly one-half their true and full values.

And you petitioner further showeth, that being unwilling to submit to so ruinous a sacrifice by the sale of the said lots, and having assurances of a loan to answer his exigencies on the security of the mortgage of the said lots, in case an effectual mortgage of the fee simple thereof could be executed and given to the lenders, your petitioner proposed to apply, and was about applying to your honor, so to modify the said last mentioned order of this court as to assent to and authorize the mortgage of the said lots, instead of the sale of the same; but doubts being suggested of the power of your honor under the acts aforesaid, to authorize the mortgage of the said premises for the purpose intended, your petitioner, in order to remove all doubts on the subject, made application to the legislature of the State of New York, at their last session, for an act to authorize either the mortgage or sale of the said premises, and an act was, on or about the twenty-ninth day of March, eighteen hundred and sixteen, passed by the said legislature, entitled "An act further supplemental to an act entitled 'An act for the relief of Thomas B. Clarke,' " whereby it is in substance enacted, that your petitioner be, and he is thereby authorized under the order heretofore granted by the chancellor, or under any subsequent order, either to mortgage or to sell the premises, which the chancellor has permitted, or hereafter may permit him to sell, as trustee under the will of Mary Clarke, and to apply the moneys so raised by mortgage or sale to the purposes required or to be required by the chancellor, under the acts heretofore passed for the relief of the said Thomas B. Clarke, as by the said act, reference being had to the same, fully and at large may appear, and to which your petitioner for greater certainty prays leave to refer himself.

And your petitioner further showeth, that his debts are daily increasing, both by the accumulation of interest and by new loans and purchases for the current expenses of himself and family.

And your petitioner further showeth, that the president and directors of the Manhattan Company aforesaid offer to advance to your petitioner, or for his use, such sum as will be sufficient to answer all the said purposes of your petitioner, and to take a mortgage upon the said lots at Greenwich that remain unsold as their security for the repayment of the said advances, with interest, and of the debt which your petitioner already owes them, as hereinbefore mentioned, if your honor shall see fit to give your assent to such mortgage; wherefore your petitioner respectfully prays, that your honor will be pleased to authorize, assent to, and direct your petitioner to execute and give to the said president and directors of the Manhattan Company, or such other body corporate, or person or persons as shall be willing and agree to make the necessary advance to your petitioner in the premises, a mortgage in fee of and upon the lots remaining unsold of the aforesaid eastern moiety or half part of the premises aforesaid at Greenwich, in the ninth ward of the city of New York aforesaid, or any part thereof, for securing to the said president and directors of the Manhattan Company or other lenders, the sum or sums of money which may be advanced by them to your petitioner in the premises, together with all such sum or sums of money as may be already owing to them by your petitioner, with lawful interest for the same, and that your honor will be pleased to give such directions for and touching the said sales thereof as may appear to your honor to be meet and proper, and that your honor will be pleased to authorize, order, and direct, at the same time that the said advances and moneys to be raised by and upon such said mortgage or mortgages, or so much thereof as may be necessary for the purpose, be appropriated and applied in and for the payment and discharge of the debts of your petitioner, so contracted by him in the premises as aforesaid, with such further advances as the exigencies of himself and his family may be found to require, together with the costs, charges, and expenses of your petitioner in his application to this honorable court on the subject or otherwise, in and about the premises, and your petitioner will ever pray, &c.

T. B. CLARKE.

Sworn to before me, this 27th May, 1816.

GIDEON HAWLEY,
Master in Chancery.

J. V. N. YATES,
Of Counsel for the Pet'r.

Filed 1st of November, 1816, as of the 30th May, 1816.

Report of Master.

In Chancery.— In the matter of the Petition of Thomas B. Clarke.

STATE OF NEW YORK, *ss.*

I, the subscriber, one of the masters of this honorable court, do respectfully report, that in pursuance of an order of this court, made in the above matter, and bearing date the 3d day of July, in the year one thousand eight hundred and fifteen, the lands and premises at Greenwich, in the ninth ward of the city of New York, mentioned in the said petition of the said Thomas B. Clarke, were regularly advertised for sale at public auction, at the Tontine coffee-house, under the direction of the subscriber, and that on the 8th day of August, 1815, the same were offered for sale at the place aforesaid, but that in consequence of there being no bidders the sale thereof was postponed. And I do further report, that on the 8th day of January, 1816, the said lands and premises were again put up for sale at the place aforesaid, where a few lots from the eastern moiety of the lands at Greenwich, mentioned in the said petition of the said Thomas B. Clarke, to wit, lots Nos. 23, 24, 25, 26, 27, 28, 29, 30, 53, and 59, being ten lots, were sold to one Samuel Norsworthy, he being the highest bidder, for the price of one hundred and twenty-five dollars per lot, which said price, in the opinion of the subscriber, was not equal to more than half the value of the said lots; wherefore, and being convinced that any further sale of the said lands and premises must be attended with a very great sacrifice of the interests of the said petitioner, the sale was by his consent and desire discontinued, since which time nothing further has been done in the premises.

All which is respectfully submitted.

THEOD. V. W. VARICK,
Master in Chancery.

May 23d, 1816.

Filed 1st November, 1816, as of the 30th May, 1816.

Order of the Chancellor, endorsed on Petition.—May 30th, 1816.

On reading and filing the within petition, together with the report of Theodorus V. W. Varick, one of the masters of this court, dated May 23, 1816, it is ordered that the said petitioner, under the act entitled "An act further supplemental to the act entitled 'An act for the relief of Thomas B. Clarke,' passed March 29th, 1816," be and he is hereby authorized, so far as the assent of this court is requisite, to mortgage, instead of selling the lands he was authorized to sell, in and by an order of this court of the third day of July last, and that the moneys to be procured and the debts to be extinguished by such mortgage or mortgages be appropriated and adjusted in the same manner and under the same checks, and not otherwise, than is prayed for in and by said order, and the said order is to apply to and govern the application of the moneys to be raised by mortgage, equally as if the same had been raised by a sale of all or any of the lands authorized to be sold in and by the said order.

May 30th, 1816.

J. KENT.

This order to be entered with Mr. Kip at New York.

J. K.

Filed 1st November, 1816, as of the 30th May, 1816.

Order entered in the Minutes.—May 30*th*, 1816.

At a court of chancery held for the State of New York, at the city of Albany, on the thirtieth day of May, in the year of our Lord one thousand eight hundred and sixteen: present, the Honorable James Kent, esq., chancellor.

In the matter of the petition of Thomas B. Clarke.

An order of this court having been heretofore, at a court of chancery, held for the State of New York, at the City Hall of the city of New York, on the third day of July, in the year of our Lord one thousand eight hundred and fifteen, made and entered by this court in this matter, on the petition of the said Thomas B. Clarke, and the report of Theodorus V. W. Varick, one of the masters of this court, to whom it was referred to examine into the allegations and matters in the said petition set forth and contained, and to report thereon, whereby it was, amongst other things therein contained in substance, ordered that the assent of the chancellor be, and thereby was, given to the sale by the petitioner of the house and lot in the fifth ward of the city of New York, and of the certain moiety or half part of the premises at Greenwich, in the ninth ward of the city of New York, to be divided by the line and in the manner for that purpose mentioned in the said petition; and the said petitioner was authorized and directed to sell and dispose of the same under and according to the act of the legislature in that behalf in the said petition mentioned and in part recited, the said sales to be made under the direction of one of the masters of this court, and the petitioner to proceed in making the sales and conveyances of the said premises so to be sold in the manner for that purpose in and by the said acts prescribed and directed; and that the purchase money for the said premises so to be sold be paid by the purchasers to the said master, to be disposed of by him as thereinafter directed; and by which said order it was further ordered and directed, and his honor the chancellor did authorize, order and direct, that so much of the net proceeds to arise from such sales as might be necessary for the purpose should be applied under the direction of one of the masters of this court, in and for the payment and discharge of the debts then owing by the petitioner, and to be contracted for the necessary purposes of his family, to be proved before the said master, and the costs, charges and expenses of the petitioner on his petition in the said matter, and the proceedings had, and to be thereafter had, under or in consequence thereof, with a proviso or condition in the said order contained for the payment out of the said funds of a certain debt in the said order mentioned, in the first place, and before and in preference to any other application thereof, and which said order contains further directions for the investment, laying out, and disposal of the residue of the said purchase moneys, and the interest thereof, for the master, under whose direction the said sales should be made, debts paid, and surplus proceeds placed out, to report his proceedings in the premises, and that all and every person or persons who were or was or might become interested therein should have liberty to apply to this court at any time or times thereafter, for any further or other orders or directions in or touching the premises; and the said Thomas B. Clarke having lately—that is to say, on or about the thirtieth day of May last past—presented his petition to his honor the chancellor, setting forth, among other things, that the said eastern moiety or half part of the said premises at Greenwich were subdivided into suitable lots, for the advantageous sale thereof, which lots being two hundred and forty full city lots, besides a number of gore lots, were offered for sale under the direction of Theodorus V. W. Varick, one of the masters of this court, in the said petition mentioned, at the Tontine coffee-house, in the city of New York, where a few of the said lots were sold, but that the lots which were so sold were struck off at such low prices that he, the petitioner, deemed it expedient to stop the sale thereof, and that the residue of the said lots, though tried at several different times, could not be sold, unless at a sacrifice of nearly one-half their true and fair value, and that being unwilling to submit to so ruinous a sacrifice by the sale of the said lots, and having assurances of a loan to answer his exigencies, on the security of a mortgage on ten lots, in case an effectual mortgage of the fee simple thereof could be given to the lenders, but doubts being suggested of the power of your honor under the said acts, in the said petition before mentioned, to authorize the mortgage of the said premises for the purposes intended, the petitioner, to remove all doubts on the subject, made application to the legislature at their last session, for an act to authorize either the mortgage or sale of the said premises, and that an act was, on or about the twenty-ninth day of March, one thousand eight hundred and sixteen, passed by the legislature, entitled as in the said petition is mentioned, whereby it is in substance enacted, that the petitioner be and he is thereby authorized under the aforesaid order of this court, or under any subsequent order, either to mortgage or sell the premises, which the chancellor has permitted or may permit him to sell as trustee under the will of Mary Clarke, in the said petition mentioned, and to apply the money raised by mortgage or sale to the purposes required or to be required by the chancellor, under the acts passed for the relief of the said Thomas B. Clarke; and further setting forth that the debts of him, the petitioner, are daily increasing, both by the accumulation of interest, and new loans and purchases for the current expenses of himself and family, and that the president and directors of the Manhattan Company offered to advance him a sufficient sum to answer his purposes, and to take a mortgage on the lots at Greenwich remaining unsold, as their security for their advances and interest and the debt already owing to them by the petitioner, as mentioned in his petition, and, among other things, praying the chancellor to authorize, assent to, and direct the petitioner to execute and give to the said president and directors of the Manhattan Company, or such other body corporate, person or persons as should be willing and agree to make the necessary advances to him, the petitioner, in the premises, a mortgage in fee of and upon the lots remaining unsold of the aforesaid eastern moiety or half part of the premises aforesaid, at Greenwich aforesaid, or any part thereof, for securing to the lenders the sum or sums of money which may be advanced by them to the petitioner in the premises, together with such sums as might be already owing to them, with lawful interest, and to authorize and direct the moneys to be raised by such mortgage or mortgages, or so much thereof as might be necessary to be appropriated and applied in and for the payment of the petitioner's debts contracted in the premises, as mentioned in the petition, with such further advances as the exigencies of himself and family may be found to require, together with costs; which petition is filed. And on motion of Mr. Samuel Jones, jr., of counsel for the petitioner, it is ordered, that the said petitioner, under the act entitled "An act further supplemental to the act entitled 'An act for the relief of Thomas B. Clarke,' passed March the twenty-ninth, one thousand eight hundred and sixteen," be and he is hereby authorized, so far as the assent or act of this court is requisite, to mortgage, instead of selling the lands and premises he was authorized to sell in and by the aforesaid order of this court, of the date of the 3d day of July last, or any part or parts thereof, and for that purpose to execute and give to the president and directors of the Manhattan Company, or other mortgagee or mortgagees, a mortgage or mortgages in fee of and upon the said lands and premises, or any part thereof, remaining unsold for securing the sum or sums of money to be advanced or lent to the petitioner, or for his use, by the president and directors of the Manhattan Company aforesaid, or other mortgagee or mortgagees, and such debt or debts as may be already owing by him to such lender or lenders, with lawful interest therefor; and it is further ordered, that the moneys to be procured and the debts to be extinguished by such mortgage or mortgages be appropriated and adjusted in the same manner and under the same checks, and not otherwise than is provided for in and by the said before mentioned order of this court; and that the said before mentioned order of this court shall apply to and govern the application of moneys to be raised by mortgage equally as if the same had been raised by a sale of all or any of the said lands and premises authorized in and by the said order to be sold; and further, that any *part* interested or to become interested therein have liberty to apply to this court at any time or times hereafter, for any further or other orders and directions in or touching the premises.

Petition to the Chancellor.—March 8th, 1817.

To the Honorable James Kent, Chancellor of the State of New York:

The petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That notwithstanding the utmost efforts of your petitioner to relieve his circumstances under the orders heretofore made by your honor on the third day of July, eighteen hundred and fifteen, and the thirtieth day of May, eighteen hundred and sixteen, he has been unable to effect scarcely any sales, or to raise any money on mortgage without a sacrifice of property, which he did not consider himself authorized to make, and he is again compelled to solicit the aid of this honorable court. From the order made on the third day of July, eighteen hundred and fifteen, it will appear to your honor that nearly the whole of the eastern moiety of the Greenwich estate, which your petitioner has power to sell or mortgage, is now under lease to the Manhattan Company in this city, to secure the payment of the sum of four thousand four hundred dollars, nine years of which are unexpired; that the said Manhattan Company decline to advance any more money to your petitioner, and they refuse to render their said lease on any terms short of the payment of their whole demand, whereby your petitioner is placed in a very embarrassed situation, not only without the means of support, but wholly unable to satisfy his other creditors, some of whom are persons who have voluntarily come forward to the assistance of your petitioner, on the faith of his power to sell or pledge the said eastern moiety of the estate. Under these circumstances, your petitioner feels himself bound, from the sense of injustice to these creditors, and from the necessities of his family, to represent to your honor the propriety and expediency of dividing the said estate by an eastern and western instead of a northern and southern line, and of granting to your petitioner the power to sell or mortgage the southern instead of the eastern moiety of the said estate, in addition to the lot on Broadway. By this arrangement, the northern moiety of the said estate will remain entire, for the future benefit of the children of your petitioner, there being no incumbrance upon the same, affecting their interest, excepting a lease of between four or five acres thereof to Robert Lenox, esquire, executed by the testatrix in her lifetime, and which will expire in about fifteen months. That your petitioner has sold but ten of two hundred and thirty lots, or thereabouts, which compose the eastern division of the said estate, and those ten fall within the said southern moiety. Your petitioner therefore humbly prays that your honor will grant him permission either to sell or mortgage the southern division of the said estate, or such parts of it as may be necessary, together with the said lot on Broadway, subject to such restrictions as your honor may think fit to impose, in order that your petitioner may be able to pay and satisfy his said debts. And in case your petitioner should not be able to meet with a ready sale for the said property, that he may be allowed to convey certain lots of the said southern moiety to his creditors, in satisfaction of his said debts, at a valuation to be approved by one of the masters of this court.

And your petitioner will ever pray, &c.

T. B. CLARKE.

STATE OF NEW YORK, *ss.*

Thomas B. Clarke, being duly sworn, says that the facts set forth in the above petition, to which he has subscribed his name, are true, and further saith not.

T. B. CLARKE.

Sworn, February 11th, 1817, before me—
JAMES A. HAMILTON,
Master in Ch'y.

Filed 8th March, 1817.

Order of Reference.--March 8th, 1817.

At a court of chancery, held for the State of New York, at the City Hall in the city of New York, on the eighth day of March, in the year of our Lord one thousand eight hundred and seventeen: present, the Honorable James Kent, esquire, chancellor.

In the matter of the petition of Thomas B. Clarke.

On reading and filing the petition of Thomas B. Clarke, setting forth that nearly the whole of the eastern moiety of the Greenwich estate mentioned and referred to in the orders heretofore made respecting the same, bearing date the third day of July, eighteen hundred and fifteen, and the thirtieth day of May, eighteen hundred and sixteen, and which the said petitioner was authorized to sell or to mortgage, was subject to a lease to the Manhattan Company in the city of New York, to secure the payment to them of the sum of four thousand four hundred dollars, nine years of which lease were still unexpired; that the said Manhattan Company declined to advance any more money to the petitioner, and refused to surrender the said lease on any terms short of the actual payment of the whole demand, whereby the petitioner was placed in a very embarrassed situation, not only without the means of support, but wholly unable to satisfy his other creditors, some of whom are persons who have voluntarily come forward to the assistance of the petitioner on the faith of his power to sell or pledge the said eastern moiety of the said estate; that he has not been able to make scarcely any sales or to raise any money upon mortgage without a sacrifice of property which he did not consider himself warranted to make; that the pressure of his debts and the necessities of his family require some measures for their relief, and representing the propriety and expediency of dividing the said estate by an eastern and western instead of a northern and southern line, and of granting to the said petitioner the power to sell or mortgage the southern instead of the eastern moiety of the said estate, in addition to the lot on Broadway, described in the said order of the third of July, eighteen hundred and fifteen, by which arrangement the northern moiety of the said estate would remain entire for the future benefit of his children, the same being subject to no other incumbrance affecting their interest excepting a lease of between four and five acres thereof to Robert Lenox, esquire, executed by the testatrix in her lifetime, and which will expire in about fifteen months; that the said petioner has sold but ten of two hundred and thirty lots or thereabouts, which compose the said eastern division, and that those ten lots fall within the said southern moiety of the said estate; whereupon the said petitioner prays permission either to sell or mortgage the said southern division of the said estate, or such parts of it as may be necessary, together with the said lot on Broadway, subject to such restrictions as this court may think fit to impose, in order that the petitioner may be able to pay and satisfy his said debts; and in case the petitioner should not be able to meet with a ready sale for the said property, that he might be allowed to convey certain lots of the said southern moiety to his creditors in satisfaction of his said debts, at a valuation to be approved of by one of the masters of this court. It is thereupon, on motion of Mr. Samuel Jones, jr., solicitor for the petitioner, ordered that it be referred to one of the masters of this court to inquire whether any of the property sold or mortgaged by the said Thomas B. Clarke is situated within the said northern moiety of the said estate, the same being divided as nearly as may be by a line running from east to west through the said estate, and that he report thereon with all convenient speed.

Master's Report.—March 11*th*, 1817.

In Chancery. In the matter of the petition of Thomas B. Clarke.

STATE OF NEW YORK, *ss.*

In pursuance of a decretal order of this honorable court, made in the above matter, bearing date the eighth day of March, in the year of our Lord one thousand eight hundred and seventeen, by which, among other things, it was ordered, adjudged, and decreed, that it be referred to one of the masters of this court to inquire whether any of the property sold or mortgaged by the said Thomas B. Clarke is situated within the northern moiety of the estate described in the said order, the same being divided as nearly as may be by a line running from east to west through the said estate, and that he report thereon with all convenient speed: now, therefore, I, the subscriber, one of the masters of this honorable court, do report, that no part of the property sold or mortgaged by the said Thomas B. Clarke is situated within the northern moiety of the estate described in the said order, the same being divided as nearly as may be by a line running from east to west through the said estate, which line will pass through a street called Twenty-sixth street.

All which is most respectfully submitted.

JAMES A. HAMILTON,
Master in Chancery.

March 11th, 1817.

Filed 19th March, 1817, as of the 15th March, 1817.

Order of Chancellor.—March 15th, 1817.

At a court of chancery, held for the State of New York, at the City Hall of the city of New York, on the fifteenth day of March, in the year of our Lord one thousand eight hundred and seventeen: present the Honorable James Kent, esquire, chancellor. In the matter of the petition of Thomas B. Clarke.

On reading and filing the report of James A. Hamilton, esquire, one of the masters of this court, bearing date the eleventh day of March, one thousand eight hundred and seventeen, by which it appears that no part of the northern moiety of the estate at Greenwich, mentioned in the petition of the above named petitioner, the same being divided into two equal parts, by a line running from east to west, through a street called Twenty-sixth street, has been either sold or mortgaged by the said Thomas B. Clarke; and it appearing to this court reasonable and proper that the prayer of the said petition should be granted; it is thereupon ordered, on motion of Mr. S. Jones, solicitor for the petitioner, that the said petitioner be and he is hereby authorized to sell and dispose of the southern moiety of the said estate, the same being divided by a line running east and west, through the centre of Twenty-sixth street aforesaid, together with the lot on Broadway, instead of the eastern moiety of the said estate, as permitted and directed by the orders heretofore made in the premises. And it is further ordered, that the said Thomas B. Clarke be, and he hereby is authorized to mortgage all or any tract or parts of the said southern moiety of the said estate, if in his judgment it will be more beneficial to mortgage them than to sell the same. And the said Thomas B. Clarke is further authorized to convey any part or parts of the said southern moiety of the said estate, in payment and satisfaction of any debt or debts due and owing from the said Thomas B. Clarke, upon a valuation to be agreed on between him and his respective creditors; provided, nevertheless, that every sale and mortgage and conveyance in satisfaction, that may be made by the said Thomas B. Clarke, in virtue hereof, shall be approved by one of the masters of this court, and that a certificate of such approval be endorsed upon every deed or mortgage that may be made in the premises. And it is further ordered, that the said Thomas B. Clarke shall be and he is hereby authorized to receive and take the moneys arising from the premises, and apply the same to the payment of his debts, and invest the surplus, in such manner as he may deem proper, to yield an income for the maintenance and support of his family.

Superior Court.

JEREMIAH TOWLE }
ag't
JOHN FARNEY. }

GENTLEMEN: Please take notice that the defendant appeals to the general term from the judgment in this action.

Yours, &c.,
JAMES S. SLUYTER,
Deft's Att'y.

April 24, 1851.

To NELSON & CHASE, Esq's,
Pl'ff's Att'ys.
D. R. FLOYD JONES, Esq., *Clerk.*

At a general term of the superior court of the city of New York, held at the City Hall, in the city of New York, on the 20th day of January, one thousand eight hundred and fifty-five:

Present, the Hons. Jos. S. Bosworth, Jno. Duer, and William W. Campbell, justices.

JEREMIAH TOWLE, Plaintiff, }
ag't
JOHN FARNEY, Defendant. }

The defendant having appealed to the general term of this court from the judgment rendered in this action on the 28th day of March, 1851, by the special term of this court, that the plaintiff is entitled in fee to the premises described in the complaint in this action, and that the plaintiff recover of the defendant possession of the real property described in the said complaint, and also one hundred and seventy dollars for withholding the possession thereof, besides his costs of this action; and the said cause having been brought on for argument before the said general term, upon such appeal, and also on the motion of the defendant for a new trial on the bill of exceptions, and the cause having been argued by David Dudley Field, esq., of counsel for the defendant, and Charles O'Conor, of counsel for the plaintiff, and due deliberation having been thereupon had, it is ordered and adjudged, that the defendant take nothing by his said appeal: and it is further ordered and adjudged that said judgment of the special term be, and the same hereby is, in all things affirmed, with costs.

And the said costs having been duly adjusted, on notice to the defendant, at the sum of $141 05, and the interest on said judgment having been computed at $45 62, which costs, interest, and said judgment amount altogether to the sum of $356 67; and on reading and filing the summons, pleadings, proceedings, and bill of exceptions in this action, and an extract from the clerk's minutes, it is ordered and adjudged that the said Jeremiah Towle do recover against the said John Farney the said sum of $356 67, and that he have execution therefor. And it is further ordered and adjudged that the said Jeremiah Towle is entitled in fee to the premises described in said complaint, and that he do recover of the said John Farney the possession thereof, namely, possession of all that certain lot, piece or parcel of land, situate, lying and being in the sixteenth ward of the city of New York, in the county of New York, on the westerly side of the Tenth avenue, and which is known and distinguished on a certain map of the property of Thomas B. Clarke, of said city, gentleman, made by Amos Corning and Uzal W. Freeman, city surveyors, by the number one hundred and eighteen, which lot is bounded westerly by the Hudson river, northerly by lot No. 119 on said map, easterly by the Tenth avenue, and southerly by lot No. 117 on said map.

And it is further ordered and adjudged, that a proper writ do issue out of this court, to be directed to the sheriff of the city and county of New York, commanding the said sheriff to remove the said John Farney, and all other persons, from the possession of the said lot and premises, and that he put the said Jeremiah Towle into full and complete possession thereof.

GEO. H. E. LYNCH, *Clerk.*

Superior Court of the City of New York.

JOHN FARNEY, Appellant,
ads.
JEREMIAH TOWLE, Respondent.

Take notice that the defendant and appellant above named hereby appeals to the court of appeals from the judgment rendered at the general term of this court, and entered therein on the 16th day of February, 1855.

Yours, &c.,

JAMES S. SLUYTER,
Att'y for Def't and Appellant.

To Messrs. HOWLAND & CHASE,
Att'ys for Plaintiff and Respondent.
GEO. H. E. LYNCH, Esq., *Clerk.*

STATE OF NEW YORK, *ss.*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 17th day of October, in the year of our Lord one thousand eight hundred and fifty-six, before the judges of the said court.

Witness Hiram Denio, esquire, chief judge.

[L. S.]

R. T. HICKS,
Acting Clerk.

JEREMIAH TOWLE, Resp't,
ag't
JOHN FARNEY, App't.

Be it remembered, that on the third day of March, in the year of our Lord one thousand eight hundred and fifty-five, John Farney, the appellant in this action, came here, into the court of appeals, by James S. Sluyter, attorney and counsel, and filed in the said court his notice of appeal, and return thereto, from a judgment of the superior court of the city of New York.

And Jeremiah Towle, the respondent in said action, afterwards appeared in said court of appeals, by Howland & Chase,.his attorneys and counsel; which said notice of appeal, and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, the said court of appeals, after having heard this action argued, by submission upon *printing* arguments and points, and after due deliberation having been had thereon, did order and adjudge that the judgment of the superior court appealed from in this action be in all things affirmed. And it was further ordered and adjudged that the respondent recover against the appellant costs of appeal in this court, and also interest on the amount of the judgment of the superior court, by way of damages, for the delay and vexation caused by the bringing of the appeal in this action.

It was also ordered that the record and proceedings be remitted to the superior court of the city of New York, there to be proceeded upon according to law.

Therefore it is considered that the said judgment be in all things affirmed, with costs, as aforesaid, and stand in full force, strength, and effect.

And hereupon, as well the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises, are by the said court of appeals remitted into the superior court of the city of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said superior court, before the justices thereof.

R. T. HICKS,
Act'g Clerk.

At a special term of the superior court of the city of New York, held at the City Hall, in the city of New York, on the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and fifty-six: present, the Honorable Thomas J. Oakley, justice.

JEREMIAH TOWLE, Plaintiff,
against
JOHN FARNEY, Defendant.

On reading and filing the remittitur from the court of appeals of the State of New York, in the above entitled action, and which remittitur, with the transcript of the judgment of the general term of this court hereinafter mentioned, are hereunto annexed, and from which remittitur it appears, that the judgment entered in this action by the general term of this court, on the 20th day of January, 1855, in favor of the above named plaintiff, against the above named defendant; that the said plaintiff is entitled in fee to the premises described in the complaint in this action, namely: all that certain lot, piece, or parcel of land situate, lying, and being in the sixteenth ward of the city of New York, in the county of New York, on the westerly side of the Tenth avenue, and which is known and distinguished on a certain map of the property of Thomas B. Clarke, of said city, gentleman, made by Amos Corning and Uzal W. Freeman, city surveyors, by the number one hundred and eighteen, which lot is bounded westerly by the Hudson river, northerly by lot number one hundred and nineteen on said map, easterly by the Tenth avenue, and southerly by lot number one hundred and seventeen on said map, and that the said plaintiff recover of the said defendant possession thereof; and that the said plaintiff have a proper writ issued out of this court, to be directed to the sheriff of the city and county of New York, commanding said sheriff to remove the said defendant and all other persons from the possession of the said lot and premises, and put the said plaintiff into full and complete possession thereof; and that the said plaintiff recover of the said defendant the sum of three hundred and fifty-six dollars and sixty-seven cents, and that he have execution therefor—has been in all things affirmed by the said court of appeals, with costs of appeal to the said plaintiff, and with interest to the said plaintiff on the said sum of three hundred and fifty-six dollars and sixty-seven cents from the time of the entry of the said judgment of the general term of this court.

And it further appearing from the said remittitur that the said cause has been remitted into this court, and is now before the justices thereof, to the end that the said judgment may be enforced and carried into full and complete effect by this court according to law:

Now, therefore, on motion of Howland and Chase, attorneys for said plaintiff, it is ordered, that the said judgment of the court of appeals be and the same hereby is made the judgment of this court, and that the said plaintiff do recover against the said defendant his costs of the said court of appeals, by the court here assessed at two hundred and ten dollars and forty-four cents, and also the amount of the said judgment so affirmed, and interest thereon as aforesaid, amounting altogether to the sum of five hundred and sixty-seven dollars and eleven cents, and that the said plaintiff have execution therefor.

And it is further ordered, that the said Jeremiah Towle do recover of the said John Farney possession of the said lot and premises hereinbefore particularly described, and that a proper writ issue out of this court, to be directed to the sheriff of the city and county of New York, commanding the said sheriff to remove the said John Farney and all other persons from the possession of the said lot and premises, and that he put the said Jeremiah Towle into full and complete possession thereof.

GEO. T. MAXWELL, *Clerk*.

Bond.

Know all men by these presents, that we, James H. Woods, of No. 20, Irving place, in the city of New York, and Ichabod T. Williams, of the same place, are held and firmly bound unto Jeremiah Towle, of the place, in the just and full sum of five hundred dollars, to be paid to the said Jeremiah Towle, his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 23d day of October, 1860.

Whereas, lately, in the court of appeals of the State of New York, in a suit depending in said court, on appeal from the superior court of the city of New York, wherein Jeremiah Towle was plaintiff and respondent, and John Farney was defendant and appellant, final judgment was rendered against the said John Farney, and the said Jeremiah Towle having obtaind a remittitur from the said court of appeals, and filed the same in the clerk's office of the said superior court, and a citation directed to the said Jeremiah Towle, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said John Farney shall fail to prosecute the said writ of error to effect, and answer all costs if he shall fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JAMES H. WOODS, [L. S.]
ICHABOD T. WILLIAMS. [L. S.]

Sealed and delivered in the presence of—
CHA'S E. JENKINS.

CITY AND COUNTY OF NEW YORK.

James H. Woods, being duly sworn, saith, that he is worth the sum of one thousand dollars over all his debts and liabilities, and property exempt by law.

JAMES H. WOODS.

Sworn before me this 23d day of October, 1860.

CHA'S E. JENKINS,
Notary Public.

CITY AND COUNTY OF NEW YORK.

Ichabod T. Williams, being duly sworn, saith, that he is worth the sum of one thousand dollars over all his debts and liabilities, and property exempt by law.

J. T. WILLIAMS.

Sworn before me this 23d day of October, 1860.

CHA'S E. JENKINS,
Notary Public.

CITY AND COUNTY OF NEW YORK.

On this 23d day of October, 1860, personally came before me James H. Woods and J. T. Williams, to me known, and acknowledged that they had executed the foregoing bond.

CHA'S E. JENKINS,
Notary Public.

Endorsed: Approved.

S. NELSON.

Citation.

The United States of America to Jeremiah Towle, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the superior court of the city of New York, wherein John Farney is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this 26th day of October, 1860.

S. NELSON.

STATE OF NEW YORK,
City and County of New York.

On this 27th day of October, 1860, personally appeared Fred'k H. Beams, before me, the subscriber, and made oath that he delivered a true copy of the within citation to Jeremiah Towle at his residence in Sixty-first street in the city of New York, on the 26th day of October, 1860, at the same time showing him the original.

FRED'K H. BEAMS.

Affirmed to before me this 27 Oct., 1860.

GEO. SNAVELL,
U. S. Com'r.

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the Superior Court of the city of New York, greeting:

Because in the record and proceedings, and also in the rendition of a judgment of a plea which is in the said court, wherein Jeremiah Towle was plaintiff, and John Farney was defendant, which judgment was rendered in the court of appeals of the said State, being the highest court of law or equity of the said State, in which a decision could be had in the said suit, between Jeremiah Towle and John Farney, and was afterwards remitted to the said superior court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption especially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said John Farney, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine, and Kenneth G. White, clerk of the circuit court of the United States for the southern district of New York.

KENNETH G. WHITE, *Clerk*.

Allowed Dec. 26, '60.

S. NELSON.

The Answer of the Justices of the Superior Court of the city of New York to the command in the within Writ contained.

The record and proceedings whereof mention is therein made, together with said writ, are hereby respectfully sent to the Supreme Court of the United States of America as therein is commanded.

In witness whereof, the said justices of the superior court of the city of New York have hereunto caused the seal of the [SEAL.] said court to be affixed, and the same to be signed by the clerk of said court, at the City Hall of the city of New York, this thirtieth day of October, A. D. 1860.

ROBERT D. LIVINGSTON, *Clerk*.

Filed 3d November, 1860.

RICHARD P~~UR~~INDELL
vs.
NAPOLEON B. MULLIKEN,
and others.

IN THE SUPREME COURT OF THE UNITED STATES.

STATEMENT OF THE CASE.

The complainant (appellant) brought his bill in Chancery against the present defendants, and other parties, stating, in substance, that in the early part of 1818 one John Sloan purchased from David Musick fifty arpents of land, to be taken out of either of three tracts of lands in the county of St. Louis, containing, in the aggregate, one thousand four hundred and thirty-two arpents, at that time claimed by Musick, and being the same tracts described in a deed of Musick to Robert Duncan, afterwards referred to.

These three tracts were—1st, a tract of seven by forty arpents in the Cul de Sac Common Fields, which is known as the Motard Tract; 2d, a tract one-and-a-half arpents by forty in the Grand Prairie Common Fields; and 3d, a tract of one thousand and ninety-two arpents, formerly belonging to Calvin Adams, as a settlement right.

It may be here stated that the ~~first and third tracts~~ adjoin each other, and were by Calvin Adams presented for confirmation as one claim, before the first Board of Commissioners for adjusting claims to land, in what is now the State of Missouri.

The bill goes on to state that at the time of the purchase a deed was executed by Musick to Sloan, and the consideration was fully paid; and that immediately after, the said Sloan went from St. Louis to Natchez, and died in about 1818, leaving a widow and two infant children living in Lexington, Ky.; that they were apprised of the fact that their father had purchased said fifty arpents of land, but, after long and repeated examinations, could not find it, and charge that it was mislaid or lost; that on the 19th January, 1820, Musick and wife sold and conveyed to R. Duncan one-third of said one thousand four hundred and thirty arpents of land, by deed recorded in the Recorder's Office of St. Louis county, which contained a provision, that as Musick had sold and conveyed fifty arpents of said premises, it was agreed between them that the fifty arpents should be deducted or reserved out of the said quantity, or any of the tracts mentioned, and that Duncan was to have the one-third of the remaining one thousand three hundred and eighty-two arpents; that the said fifty arpents were the same charged as having been sold and conveyed to said Sloan; that the title failed to all the other tracts except the Motard Tract; that the fifty arpents so sold to Sloan were to have been allotted out of that tract; that after conveyance to Duncan Musick conveyed to other parties the other two-thirds of said tract; that on 14th April, 1831, Musick and wife conveyed to Charles Mulliken all their title to the fifty arpents aforesaid, and that in 1838 proceedings were had in partition, and said Motard Tract was divided among the claimants; that all the grantees of Musick had notice of Sloan's title; that in the proceedings in partition 9 81-100 arpents were allotted to Charles Mulliken of said Molard Tract; that another part not named or described in the bill was allotted to Duncan, who had conveyed it to divers defendants; that Mulliken died and his interest had descended to his children, appellees here; that said John Sloan, and one child, are dead, leaving but one heir, J. R. Sloan, who did not become of full age until 1834, and who sold to complainant. Complainant asks for decree for fifty arpents undivided out of that allotted to Duncan in the partition; but if he cannot have that asks to have the 9 81-100 arpents allotted to Charles Mulliken vested in him.

The defendants demurred to the bill, which was sustained as to all but the appellees; who answered, denying that John Sloan purchased the fifty arpents of land; or that Musick ever made him a deed for it; or that Sloan paid any consideration for it; or that the fifty arpents mentioned in the deed of Musick to Duncan were ever conveyed by Musick to Sloan; or that any conveyance to Sloan was thereby referred to: admit that Musick conveyed to Mulliken, their father, so much of the fifty arpents mentioned in the deed to Duncan as he had not already disposed of; but that he had by prior deeds conveyed away two-thirds of said fifty arpents; that Mulliken paid to Musick $250 for the interest, which was then a large price for it; that at the time of the conveyance to Mulliken, there was no legal title to any of the land, and that in 1836 the Motard Tract was confirmed; that there was never any title to the others, and that the Motard Tract was claimed by the city of St. Louis as commons: deny that all or any of Musick's grantees had any notice of any alleged title of Sloan: set up the proceedings in partition, and charge that thereby Mulliken obtained a perfect title to the 9 81-100 arpents allotted to him. They ignore the allegations of the bill as to Sloan and complainant's title under him, and set up as a defense laches of complainant, and those under whom he claims, and also possession for more than twenty years.

On the trial, complainant gave in evidence title papers, showing a conveyance of the Motard Tract to Musick; also the conveyance of Musick to Duncan, dated Jan. 19, 1820, and of Musick and wife to Mulliken, dated the 14th April, 1831, with covenant of title and warranty as to his own acts.

The complainant then gave in evidence the deposition of David Adams, which tended to prove that Sloan had in 1818 made an agreement with his (witness') father, Calvin Adams, to go with him to New Orleans on a keel-boat, for which service Adams was to convey to him fifty arpents of land, which was to be taken off the *east end* of the Motard Tract; that though the title of the Motard Tract was in Musick, he held it for security for a debt owed by Adams to him; that Sloan then went as far as Natchez on the boat, and left with Adams' consent; that in 1820 witness had a conversation with Musick about these tracts, in which Musick said he would convey to him, his brother, sister, and mother, these tracts, together with one in Jefferson county, on payment of amount due him; that Musick in 1823 told him that he and Calvin Adams were bound by their agreement to give Sloan fifty arpents off the east end of the Motard Tract, and that if he ever came, he (Musick) would be obliged to make him a deed; that in 1830 or 1831 witness had a conversation with Charles Mulliken, in which Mulliken told witness that he had seen an agreement between Musick, Adams, and Sloan, by which

Sloan was to have fifty arpents off the east end of the Motard Tract.

The complainant also gave in evidence the deposition of James C. Musick, a son of David Musick, who was born 20th May, 1803, who testified as to Sloan's visiting his father in summer or fall of 1815, in relation to obtaining a deed to some portion of the Calvin Adams tract; that some paper was executed by his father, but what it was witness did not know.

Complainant also gave in evidence the deposition of Joab Toney, which is not important, except that on the cross-examination Toney stated that he was one of the parties to the partition, deriving title through Hayden; that Hayden had possession of the Motard Tract for himself, and others interested, in 1832, and witness held as Hayden did till partition in 1836; that immediately after the partition Mulliken took possession of the 9 81-100 arpents allotted to him, and has held it ever since.

Complainant also gave in evidence the deposition of J. R. Sloan, who gave evidence tending to prove that his father died about 1818 or 1819, and that in 1838 he employed counsel in St. Louis to bring suit for the fifty arpents claimed, and afterwards other attorneys, but they neglected the matter and did not do it; that in 1838 he had a conversation with Charles Mulliken in St. Louis, in which Mulliken admitted that he had purchased the land of Musick, Musick declaring that he had sold it to Sloan, and given him a title bond; that Sloan had left the country, and he had never heard of him since, and so he bought it; that the tract was then in litigation, and Mulliken proposed to divide the land equally, and each pay half expense of litigation, which witness declined.

Evidence was given tending to prove derivative title from John Sloan to complainant.

The defendant gave in evidence the confirmation under act of 1836, of the tract of seven by forty arpents, to Jos. Motard or his legal representatives; and then gave in evidence the deed of David Musick, to the children of Calvin Adams, of two-thirds of the several tracts of land, including the Motard Tract, which deed was dated September 25, 1823; also, derivative title from those children to parties to the partition proceedings of 1836. They then gave in evidence the proceedings in partition of the Motard Tract in 1836, between those parties thus acquiring title under children of Calvin Adams, Robert Duncan and Charles Mulliken, before the St. Louis Circuit Court, in which the extreme *western* sixty arpents were allotted to Robert Duncan, and 9 81-100 arpents next east to it were allotted to Charles Mulliken, and proved that fifty arpents off the east end of the Motard Tract would not include either of the tracts allotted to Duncan and Mulliken.

The defendants gave evidence tending to prove that Hayden (who had a title bond from one of the Adams's, and who conveyed to Toney, who obtained a deed from Adams, and was a party to the suit for partition,) took possession for himself and Mulliken of the Motard Tract in 1831, and he and Toney held it till the partition, and that Mulliken and his heirs had held the 9 81-100 arpents allotted him ever since.

They also gave evidence tending to prove that in 1831, when Mulliken bought, the Motard Tract would not have brought more than about five dollars an arpent, and that at time of trial the 9 81-100 arpents allotted to Mulliken was worth some fourteen thousand dollars.

BRIEF.

The defendants in error submit the following propositions:

I.

Upon the complainant's own showing, he was entitled to no relief upon his bill as framed.

The bill asks the Court to decree a title to him on the ground that there had been a *conveyance* to John Sloan, under whom he claims, and that such deed had been lost.

Now, all the proof in the case, given by complainant, goes to show that if any instrument was given by Musick in relation to any land to Sloan, it was a *bond*, and there is not a scintilla of proof that any deed of any kind was ever executed by Musick to Sloan.

The conversations as detailed by the witness Adams with Musick, (page 32,) speak only of a *bond*—an *agreement* in reference to some lands.

If any heed is given to the statements of James C. Musick, of an occurrence taking place when he was twelve years old, and to which his attention has never been called till he was examined, it shows that it must have been an agreement, as Musick did not go out of the house, and did not acknowledge any paper, and he does not pretend to know what the paper was.

But the actions of David Musick himself, show that if he executed to Sloan any instrument at all, it was only an agreement to convey. In 1820 he makes the deed for the one-third of the tracts containing one thousand four hundred and thirty-two arpents to Duncan, reserving fifty acres undivided. If he had already *conveyed* that fifty acres to any one, why reserve it? If there was a deed from him, his grantee would take by the deed, and needed no reservation. In 1823, he conveys the other two-thirds to the children of Calvin Adams without mentioning any deed or agreement, and without any reservation whatsoever. In 1831, he attempts to convey the fifty arpents to Mulliken, and warrants the title, though, in point of fact, as he had previously conveyed to the children of Calvin Adams two-thirds of what he had remaining after the conveyance to Duncan, he had at that time only one-third of the fifty arpents to dispose of.

As the bill is not for the specific performance of a contract to convey, but proceeds entirely upon the ground of the right to relief for the loss of a deed conveying the land, there could by possibility be no decree in complainant's favor.

II.

The complainant's own proof shows that if complainant has any claim to any land in the limits of the Motard Tract, it is not to any portion owned by Mulliken's heirs.

The proof is clear and distinct as to one point of the case, and that is that the land which Sloan was to have, for which an instrument was executed by Musick to Sloan, as alleged, was for fifty arpents off the east end of the Motard Tract. Now, according to the allegations of the bill, taken in connection with the proof, as to location of the tract Sloan was to have, here was an absolute deed executed by Musick to Sloan for fifty arpents, to be taken off the east end of the Motard Tract, which would have been a tract of seven arpents in front by seven and one-seventh arpents in depth.

As this would be the first conveyance, then Sloan would have been vested with that tract in fee, and if complainant had title to any land it would be to that specific tract.

The land which defendants claim is at a considerable distance west of that specific tract, and if Sloan had purchased the Jefferson county Tract, spoken of by Adams in his testimony, it might be with equal show of reason contended that defendants should respond in that case as in this.

Any right of action of complainant would be against those in possession of that specific tract to which he had a perfect title, and if he had neglected to have the deed put on record, so that the persons in possession could protect themselves under the Statute of Limitations, it is his misfortune.

III.

But if the bill had been framed as upon a lost bond, and if there had been no laches and no change of value, yet upon the proof complainant is entitled to no relief.

1st. If we lay aside the alleged statements of David Musick and Mulliken, then there is no evidence of the existence of any instrument in relation to any land. James C. Musick does not pretend to know what the paper, given by his father to Sloan, contained. No one professes to have read it, or to know what it contained, or the land described in it. If any agreement as to any portion of the Motard Tract existed, no one knows what was the condition upon which a conveyance was to have been made. The fact of the proviso in the deed of Musick to Duncan proves nothing, except an intention at that time to reserve from the operation of that conveyance fifty arpents of that land. It will be recollected that Calvin Adams had then no title to this land; Musick having purchased it, and afterwards agreed to convey it to widow and children of Adams upon their payment of the purchase money.

2d. But the alleged statements of Musick and of Mulliken are no evidence of any agreement existing in 1831 binding on Musick to convey any land.

That Sloan did not perform the work which was, according to the witness Adams, to entitle him to the land, is proved; that if any thing was stipulated in regard to the matter between Calvin Adams and Sloan, is not shown. For aught that we can know, it may have been that any agreement given by Musick to Sloan was surrendered at that time.

There is no evidence that Sloan had any such paper at the time of his death, in 1818. If he ever had such a one, it might have been surrendered to Calvin Adams, or transferred by Sloan before his death to some other person, and delivered up to Musick either before the conveyance to Mulliken or afterwards.

Musick's acts show conclusively that he did not consider that there existed any such binding agreement, for in 1823 he conveyed two-thirds of what remained, after the conveyance to Duncan, to the children of Calvin Adams without any reservation whatever, and in 1831 he conveys to Mulliken, for a full consideration, and warrants the title as against any acts of his.

3d. The proof is as to an agreement in relation to the eastern fifty arpents of the Motard Tract, and if for any reason it could be supposed that complainant could assert any right to any other portion, or to have a right to an undivided fifty arpents, yet he had the same right as to all the owners in the Motard Tract.

4th. If, however, it is contended that the only testimony which goes to show any agreement is a mistake as to the location of the land to be conveyed, then we are thrown back upon the presumption arising from the reservation in the deed of Musick to Duncan.

That reservation is of fifty arpents in the whole tract of one thousand four hundred and thirty-two arpents, and it would have been a right undivided in the whole tract, no part of which was confirmed, of about one-twenty-eighth part. The obligee would be interested in each tract in the same proportion as in the whole, and if the title to one of the tracts failed, he lost equally with the others his proportionate part; could only have his proportionate part, about one-twenty-eighth of the tract, the title to which was finally confirmed.

IV.

The alleged statements of Mulliken do not strengthen the complainant's case.

David Adams testifies that in 1830 or 1831, he thinks, Mulliken came and asked him about Sloan, and in the conversation told him that he had seen an instrument in writing that was binding on Calvin Adams and Musick for fifty arpents in the Motard Tract, to be taken off the east end; that the witness is mistaken is very obvious—Mulliken, of course, never saw the agreement executed to Sloan, and there is no evidence that Musick had a duplicate: if he had, he would hardly have exhibited it to Mulliken, who was buying from him at a large price, when we consider the state of the title.

Joseph R. Sloan testifies that in 1838 he had a conversation with Mulliken, in which Mulliken admitted that he purchased the land from Musick, Musick informing him that he had executed a title bond to Sloan for it; that the land was in litigation, and proposing that they should unite their titles, and pay equally the expenses of the litigation, and divide the land, which Sloan declined, preferring that some one else should pay these expenses, and pay taxes, and fence the land, until such time as he should find it convenient to assert his title to the land. Admitting such a conversation to have occurred, and taking it most strongly against Mulliken, it is, at most, an admission that Musick had executed to Sloan a bond for a conveyance, but he does not admit any right at that time, or at any time, in Sloan to have any such conveyance, but asserts his own rights in the premises; but to avoid litigation threatened was willing to compromise, if Sloan would share with him the expenses of the litigation about the general title. The land was then not valuable, and Mulliken might very well have been willing to divide, if he could get some one to share the expenses of one litigation, and thereby avoid the expenses of another litigation.

At most, it proves his knowledge of the existence of an agreement to convey to Sloan, according to one witness, fifty arpents off the east end of the Motard Tract; and, according to the other witness, an undivided fifty arpents out of the three tracts comprising the fourteen hundred and thirty-two arpents.

V.

But conceding that such an instrument existed, and that it was either a bond to convey, or an absolute deed, and that there is proof of what the land was described in it, yet the testimony clearly shows that complainant is entitled to no relief. If we consider, as alleged in the bill, that a deed for the land was executed, and was lost, then there can be no relief, for—

1st. There has been too great laches in the case.

If any deed was executed it was in 1815 (see evidence of Musick at page 36.) Sloan died in 1818, without having recorded the deed, and without taking any steps in relation to the land. It is not pretended that any one ever saw the deed after it was delivered, so that it must be taken to have been lost as early as the death of Sloan. Then there is a lost deed to a piece of land, and no steps taken for forty years to obtain a decree of title for the land. According to the allegations of the bill, the representatives of Sloan knew all the time of his title to the land, yet *they* commenced no suit at all, and their assignee only after a lapse of forty years. Joseph R. Sloan, the son, under whom complainant claims title, came of age in 1834, and as early as 1838 knew that Mulliken claimed portions of the Motard Tract. Neither does the employment of counsel to prosecute the claim help the matter. According to the evidence of Joseph R. Sloan, he employed counsel in 1838 to prosecute his claim, and so little attention did he or any one else pay, that it was not until twenty years after the employment of counsel, and twenty-four years after he came of age, that any suit was instituted.

Laches, much less flagrant than this, will prevent a Court of Equity from granting relief even in a clear case. 2 Story Eq. Juris. (7th ed.) sec. 1520, page 889, and note 4, and cases there cited; Holt vs. Rogers, 8 Peters 420, et al.; Patte vs. Carroll, 8 Cranch 471; Moore vs. Blake, 1 Ball & P. 69; Boone vs. Missouri Iron Co., 17 How 340.

2d. The fact that the condition of the title and the value of the land has very materially changed, will prevent the Court from interposing.

When this alleged instrument was executed there was no title to any of the tract of one thousand four hundred and thirty-two arpents. There were expenses to be incurred in getting the tract confirmed, to which Sloan never contributed. No portion of the tract, except the seven by forty arpents confirmed to Motard's representatives, ever was confirmed, and that was not confirmed until 1836. The representatives of Sloan knew of these rights all the time, yet thought it not of sufficient value to move towards instituting proceedings to obtain a decree of title until they learned that the Motard Tract had been confirmed. It was not until the termination of the case of the city of St. Louis vs. Toney, reported in 21 Mo. R., page 243, when the title to the Motard Tract was finally established, as against the Commons title, that any suit was instituted. This was a virtual abandonment of the pretense of title.

So, too, as to the value of the land. Sullivan Blood testifies (see page 87) that in 1831 land with good title in that situation was worth about five dollars an arpent—that it would not have brought ten dollars an arpent. If then Mulliken had obtained fifty arpents, he was paying a full price for so much land with such title, but as he really only obtained an undivided interest of sixteen and two-thirds arpents, he was paying an exhorbitant price. The value in 1818 of the whole fifty arpents was, of course, much less—probably not over fifty dollars. According to Mr. Blood's testimony the land is now worth some twelve or fourteen thousand dollars.

It is well settled that when there has been a great change in the condition or value of the land, Courts of Equity will not assist. Brashear vs. Gratz, 2 Wheat, 528; Rogers vs. Saunders, 16 Maine, 92; Cooper vs. Brown, 2 McLean, 495.

3d. Equity will not relieve by decree of title upon a lost deed alone, unless the complainant is in possession of the land. 1 Story Eq. Juris., sec. 84.) This would be in effect setting aside the Statute of Frauds. Even after a lapse of some forty years after the loss of the deed, the Court is asked to decree title without the complainant ever having been in possession, against an adverse possession of over twenty years, and when no evidence is given of the contents of the deed. To grant relief the Court would have to *make* in effect a deed of the land, for there is no evidence of what the alleged one contained.

But if we consider, as the proof shows, that if any instrument was executed, it was an agreement to convey, then beyond any question this case presents nothing for the interference of the Court.

It would then present the case of a prayer for specific performance of a contract for the conveyance of land, after a lapse of forty-three years after the instrument was executed, and this of an instrument of which the terms were not known; not known whether there was money to be paid or not, and no satisfactory evidence of the land to be conveyed. It will be recollected that Adams says that David Musick had purchased the tracts at Sheriff's sale, and held the title to them, but told Adams' children that if the money he had paid for it was paid to him he would convey to them. Whether Sloan was to pay any part of this, we cannot tell.

(*a*) To obtain decree for specific performance, the evidence must be precise, not vague and uncertain. Colson vs. Thompson, 2 Wheat, 336.

(*b*) The principles in regard to laches and change in values, apply much more strongly in the case of a bond than of a deed, so that if the agreement still existed, it would not now be enforced. 2 Story Eq. Juris., (7th ed.,) sec. 771, and cases there cited; 1 Sugden on Vendors, (Perkins' ed.,) page 289, and cases cited on page 341 (top page) of that edition; Craig vs. Luper et al., 2 Yerg, 193; Bachen vs. Martin, 3 Yerg, 55; Moore vs. Blake, 1 Ball & P. 69.

(*c*) The Court will not decree title when no suit could be maintained at law upon the bond for damages. Suppose Musick had conveyed to confessedly an innocent purchaser, so that no right could be enforced as against him, then the recourse of Sloan's representatives would have been barred scores of years ago. See Kane vs. Bloodgood, 7 John. ch. ~~9~~ R, p. 118.

(*d*) But in this case, actual adverse possession of this land has been proved for more than twenty years, so that to decree title would be to put the party in a better position than if he had had a regular deed of the land duly recorded. In that case, if he had brought ejectment he could not prevail.

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